

By: Senator(s) Fillingane, Doty, McDaniel,  
Branning, McMahan

To: Judiciary, Division A

SENATE BILL NO. 2828  
(As Sent to Governor)

1 AN ACT TO CREATE THE MISSISSIPPI GUARDIANSHIP AND  
2 CONSERVATORSHIP ACT; TO ENACT A SHORT TITLE; TO PROVIDE  
3 DEFINITIONS; TO PROVIDE THAT THE PRINCIPLES OF LAW AND EQUITY ARE  
4 SUPPLEMENTAL TO THE ACT; TO PROVIDE SUBJECT-MATTER JURISDICTION;  
5 TO PROVIDE FOR TRANSFER OF PROCEEDINGS; TO ESTABLISH VENUE; TO  
6 CLARIFY APPLICATION OF THE RULES OF EVIDENCE, RULES OF CIVIL  
7 PROCEDURE AND RULES OF APPELLATE PROCEDURE; TO PROVIDE FOR  
8 ISSUANCE OF LETTERS OF GUARDIANSHIP OR CONSERVATORSHIP; TO PROVIDE  
9 THE EFFECT OF ACCEPTANCE OF APPOINTMENT AS A GUARDIAN OR  
10 CONSERVATOR; TO AUTHORIZE CO-GUARDIANS AND CO-CONSERVATORS; TO  
11 AUTHORIZE JUDICIAL APPOINTMENT OF SUCCESSORS; TO PROVIDE FOR THE  
12 EFFECT OF DEATH, REMOVAL OR RESIGNATION OF A GUARDIAN OR  
13 CONSERVATOR; TO REQUIRE NOTICE OF HEARINGS; TO ALLOW WAIVER OF  
14 NOTICE; TO AUTHORIZE APPOINTMENT OF A GUARDIAN AD LITEM; TO  
15 AUTHORIZE A PERSON TO REQUEST NOTICE; TO REQUIRE DISCLOSURE OF  
16 BANKRUPTCY OR CRIMINAL HISTORY; TO AUTHORIZE COMPENSATION AND  
17 REIMBURSEMENT OF EXPENSES; TO IMMUNIZE THOSE SERVING FROM  
18 LIABILITY FOR AN ACT OF THE WARD; TO AUTHORIZE ONE APPOINTED TO  
19 PETITION THE COURT FOR INSTRUCTION OR RATIFICATION; TO PROVIDE  
20 WHEN A THIRD PARTY NEED NOT ACCEPT THE AUTHORITY OF THE APPOINTEE;  
21 TO AUTHORIZE A TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR; TO  
22 AUTHORIZE REGISTRATION OF AN OUT-OF-STATE GUARDIAN OR CONSERVATOR;  
23 TO ENACT TRANSITION PROVISIONS; TO AUTHORIZE GUARDIANSHIP OF A  
24 MINOR; TO REQUIRE A PETITION FOR APPOINTMENT; TO REQUIRE NOTICE OF  
25 HEARING; TO AUTHORIZE APPOINTMENT OF AN ATTORNEY FOR THE MINOR; TO  
26 AUTHORIZE THE MINOR'S ATTENDANCE AT A HEARING; TO SPECIFY THE  
27 RIGHTS OF THE MINOR; TO AUTHORIZE A LIMITED GUARDIANSHIP; TO  
28 AUTHORIZE AN EMERGENCY GUARDIAN; TO PROVIDE THE DUTIES AND POWERS  
29 OF A GUARDIAN; TO PROVIDE FOR THE REMOVAL OF A GUARDIAN AND  
30 TERMINATION OF A GUARDIANSHIP; TO PROVIDE FOR THE GUARDIANSHIP OF  
31 AN ADULT; TO REQUIRE A PETITION FOR APPOINTMENT OF A GUARDIAN; TO  
32 REQUIRE NOTICE OF A HEARING; TO AUTHORIZE APPOINTMENT OF A  
33 GUARDIAN AD LITEM; TO REQUIRE PROFESSIONAL EVALUATION; TO SPECIFY  
34 THE RIGHTS OF THE ADULT AT A HEARING; TO PROVIDE FOR



35 CONFIDENTIALITY OF RECORDS; TO SPECIFY WHO MAY BE A GUARDIAN; TO  
36 PROVIDE STANDARDS FOR AN ORDER APPOINTING A GUARDIAN FOR AN ADULT;  
37 TO REQUIRE NOTICE OF AN ORDER OF APPOINTMENT; TO AUTHORIZE AN  
38 EMERGENCY GUARDIAN FOR AN ADULT; TO SET FORTH THE DUTIES AND  
39 POWERS OF A GUARDIAN OF AN ADULT; TO AUTHORIZE LIMITATIONS ON THE  
40 GUARDIAN'S POWER; TO REQUIRE A GUARDIAN'S PLAN AND AUTHORIZE  
41 AMENDMENT THEREOF; TO REQUIRE WELL-BEING REPORTS AND MONITORING OF  
42 THE GUARDIANSHIP; TO AUTHORIZE REMOVAL OF A GUARDIAN AND  
43 APPOINTMENT OF A SUCCESSOR; TO PROVIDE FOR TERMINATION OR  
44 MODIFICATION; TO AUTHORIZE CONSERVATORSHIP OF THE ESTATE OF A  
45 WARD, WHETHER A MINOR OR AN ADULT; TO REQUIRE PETITION FOR  
46 APPOINTMENT OF A CONSERVATOR; TO PROVIDE FOR NOTICE AND HEARING;  
47 TO AUTHORIZE THE COURT TO ORDER PRESERVATION AND APPLICATION OF  
48 THE ESTATE DURING THE PENDENCY OF THE PROCEEDING; TO AUTHORIZE  
49 APPOINTMENT OF A GUARDIAN AD LITEM; TO AUTHORIZE APPOINTMENT OF AN  
50 ATTORNEY FOR THE RESPONDENT; TO REQUIRE PROFESSIONAL EVALUATION;  
51 TO SPECIFY THE RESPONDENT'S RIGHTS; TO PROVIDE FOR  
52 CONFIDENTIALITY; TO PROVIDE WHO MAY SERVE AS CONSERVATOR; TO  
53 REQUIRE AN ORDER APPOINTING A CONSERVATOR; TO REQUIRE NOTICE OF  
54 THE APPOINTMENT OF A CONSERVATOR; TO AUTHORIZE APPOINTMENT OF AN  
55 EMERGENCY CONSERVATOR; TO LIMIT THE POWERS OF A CONSERVATOR; TO  
56 PROVIDE FOR PETITION FOR CERTAIN RELIEF AFTER THE APPOINTMENT OF A  
57 CONSERVATOR; TO REQUIRE BOND, OATH AND ASSET-PROTECTION  
58 ARRANGEMENTS; TO REQUIRE CERTAIN TERMS FOR THE BOND; TO PROVIDE  
59 FOR THE DUTIES AND POWERS OF A CONSERVATOR; TO REQUIRE A  
60 CONSERVATOR'S PLAN AND AUTHORIZE AMENDMENT THEREOF; TO REQUIRE  
61 INVENTORY AND RECORD KEEPING; TO AUTHORIZE ADMINISTRATIVE POWERS  
62 OF A CONSERVATOR NOT REQUIRING COURT APPROVAL; TO AUTHORIZE  
63 DISTRIBUTION FROM THE CONSERVATORSHIP ESTATE; TO REQUIRE  
64 REPORTING, ACCOUNTING AND MONITORING; TO BAR ATTEMPTED TRANSFER OF  
65 PROPERTY BY THE WARD; TO AUTHORIZE VOIDING OF A TRANSACTION THAT  
66 CONSTITUTES A CONFLICT OF INTEREST; TO PROTECT PERSONS DEALING  
67 WITH A CONSERVATOR IN GOOD FAITH; TO AUTHORIZE PRESENTATION AND  
68 ALLOWANCE OF CLAIMS AGAINST THE ESTATE; TO PROVIDE FOR THE  
69 PERSONAL LIABILITY OF A CONSERVATOR; TO AUTHORIZE REMOVAL OF A  
70 CONSERVATOR AND APPOINTMENT OF A SUCCESSOR; TO AUTHORIZE  
71 TERMINATION OR MODIFICATION OF A CONSERVATORSHIP; TO AUTHORIZE  
72 CERTAIN TRANSFERS WITHOUT APPOINTMENT OF A CONSERVATOR IF IN THE  
73 BEST INTEREST OF A MINOR; TO AMEND SECTION 9-1-49, MISSISSIPPI  
74 CODE OF 1972, TO CONFORM A COURT CLERK'S RESPONSIBILITY TO SUBMIT  
75 CERTAIN INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY; TO AMEND  
76 SECTION 43-47-29, MISSISSIPPI CODE OF 1972, TO CONFORM THE  
77 AUTHORITY OF THE DEPARTMENT OF HUMAN SERVICES TO SEEK APPOINTMENT  
78 OF A CONSERVATOR FOR A VULNERABLE PERSON; TO AMEND SECTION  
79 45-9-103, MISSISSIPPI CODE OF 1972, TO CONFORM PROVISIONS  
80 CONCERNING TRANSMISSION OF FEDERAL PROHIBITED PERSON INFORMATION  
81 TO THE FBI; TO AMEND SECTIONS 81-5-62, 81-12-145 AND 81-14-363,  
82 MISSISSIPPI CODE OF 1972, TO CONFORM PROVISIONS CONCERNING  
83 ACCOUNTS PAYABLE UPON DEATH; TO AMEND SECTION 91-8-103,  
84 MISSISSIPPI CODE OF 1972, TO CONFORM DEFINITIONS WITH REGARD TO  
85 TRUSTS; TO AMEND SECTIONS 93-14-102 AND 93-14-302, MISSISSIPPI



86 CODE OF 1972, TO CONFORM PROVISIONS AFFECTING JURISDICTION OF  
87 ADULT GUARDIANSHIP AND PROTECTION PROCEEDINGS AND CONFORM AGE OF  
88 MAJORITY; TO REPEAL SECTIONS 93-13-3 THROUGH 93-13-79, 93-13-111,  
89 93-13-121 THROUGH 93-13-135, 93-13-151, 93-13-161, 93-13-181  
90 THROUGH 93-13-187, 93-13-211 THROUGH 93-13-219, 93-13-251 THROUGH  
91 93-13-267 AND 93-13-281, MISSISSIPPI CODE OF 1972, WHICH DEAL WITH  
92 GUARDIANSHIPS AND CONSERVATORSHIPS; TO DIRECT THAT TITLE 93,  
93 CHAPTER 13, MISSISSIPPI CODE OF 1972, BE RETITLED; AND FOR RELATED  
94 PURPOSES.

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

96 **SECTION 1.** The following is the Mississippi Guardianship and  
97 Conservatorship Act and shall be codified in Title 93, Mississippi  
98 Code of 1972, to replace those statutes in Title 93, Chapter 13,  
99 Mississippi Code of 1972, which are repealed in Sections 11  
100 through 19 of this act:

101 **ARTICLE 1**

102 **GENERAL PROVISIONS**

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

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

106 (a) "Adult" means an individual at least twenty-one  
107 (21) years of age or an emancipated individual under twenty-one  
108 (21) years of age.

109 (b) "Claim" includes a claim against an individual or  
110 conservatorship estate, whether arising in contract, tort, or  
111 otherwise.

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



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

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

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

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

125 (h) "Guardian ad litem" means a qualified person  
126 appointed by the court to inform the court about the ward, to  
127 protect the best interests of the ward, and to make  
128 recommendations to the court in the best interests of the ward.

129 (i) "Less restrictive alternative" means an approach to  
130 meeting an individual's needs which restricts fewer rights of the  
131 individual than would the appointment of a guardian or conservator  
132 in the discretion of the court.

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

136 (k) "Limited conservatorship" means a conservatorship  
137 that grants the conservator less than all powers available under  
138 this act, grants powers over only certain property, or otherwise  
139 restricts the powers of the conservator.



140           (1) "Limited guardianship" means a guardianship that  
141 grants the guardian less than all powers available under this act  
142 or otherwise restricts the powers of the guardian.

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

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

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

150           (p) "Property" includes tangible and intangible  
151 property.

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

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

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

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

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

162           (t) "State" means a state of the United States, the  
163 District of Columbia, Puerto Rico, the United States Virgin  
164 Islands, or any territory or insular possession subject to the



165 jurisdiction of the United States. The term includes a federally  
166 recognized Indian tribe.

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

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

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

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

181 (a) Exclusive jurisdiction to determine the need for  
182 the guardianship or conservatorship;

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

187 (c) Nonexclusive jurisdiction to determine the validity  
188 of a claim against the respondent or property of the respondent or  
189 a question of title concerning the property; and



190 (d) If a guardian or conservator is appointed,  
191 exclusive jurisdiction over issues related to administration of  
192 the guardianship or conservatorship.

193 (3) A court that appoints a guardian or conservator has  
194 exclusive and continuing jurisdiction over the proceeding until  
195 the court terminates the proceeding.

196 **Section 105. Transfer of proceeding.** (1) This section does  
197 not apply to a guardianship or conservatorship for an adult that  
198 is subject to the transfer provisions of the Uniform Adult  
199 Guardianship and Protective Proceedings Jurisdiction Act (Title  
200 93, Chapter 14, Mississippi Code of 1972).

201 (2) After appointment of a guardian or conservator, the  
202 court that made the appointment may transfer the proceeding to a  
203 court in another county in this state or another state if transfer  
204 is in the best interest of the ward, a final settlement of the  
205 conservatorship accounts is made, and the guardian or conservator  
206 qualifies as such in the county or state to which the proceeding  
207 is being removed.

208 (3) If a proceeding for a guardianship or conservatorship is  
209 pending in another state or a foreign country and a petition for  
210 guardianship or conservatorship for the same respondent is filed  
211 in a court in this state, the court must notify the court in the  
212 other state or foreign country and, after consultation with that  
213 court, assume or decline jurisdiction, whichever is in the best  
214 interest of the respondent.



215 (4) A guardian or conservator appointed in another state or  
216 country may petition the court for appointment as a guardian or  
217 conservator in this state for the same individual if jurisdiction  
218 in this state is or will be established. The appointment may be  
219 made on proof as outlined in Section 124.

220 (5) Notice of hearing on a petition under subsection (4),  
221 together with a copy of the petition, must be given to the  
222 respondent, if the respondent is at least fourteen (14) years of  
223 age at the time of the hearing, and to the persons that would be  
224 entitled to notice if the procedures for appointment of a guardian  
225 or conservator under this act were applicable. The court shall  
226 make the appointment unless it determines the appointment would  
227 not be in the best interest of the respondent.

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

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

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

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

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





240 (a) The county in which the respondent resides;  
241 (b) If the respondent has been admitted to an  
242 institution by court order, the county in which the court is  
243 located; or

244 (c) If the proceeding is for appointment of an  
245 emergency guardian for an adult, the county in which the  
246 respondent is present.

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

248 (a) The county in which the respondent resides, whether  
249 or not a guardian has been appointed in another county or other  
250 jurisdiction; or

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

253 (4) If proceedings under this act are brought in more than  
254 one (1) county, the court of the county in which the first  
255 proceeding is brought has the exclusive right to proceed unless  
256 the court determines venue is properly in another court or that  
257 the interest of justice otherwise requires transfer of the  
258 proceeding.

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



263 (2) If proceedings for a guardianship or conservatorship for  
264 the same individual are commenced or pending in the same court,  
265 the proceedings may be consolidated.

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

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

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

276 (3) The court in its initial order of appointment or at any  
277 subsequent time may limit the powers conferred on a guardian or  
278 conservator. The court shall direct the clerk to issue new  
279 letters of guardianship or conservatorship that reflect the  
280 limitation. The court shall direct the clerk to give notice of  
281 the limitation by service of a copy of the court's order on the  
282 guardian or conservator, the ward, and any other person the court  
283 determines.

284 (4) Limitations on the powers of a guardian or conservator  
285 or on the property subject to conservatorship must be stated in  
286 the letters of guardianship or conservatorship.



287           **Section 109. Effect of acceptance of appointment.** By  
288 accepting appointment, a guardian or conservator submits to the  
289 personal jurisdiction of the court in this state in any proceeding  
290 relating to the guardianship or conservatorship.

291           **Section 110. Co-guardian; co-conservator.** When the court  
292 deems appropriate, the co-guardian or co-conservator must comply  
293 with Section 108.

294           **Section 111. Judicial appointment of successor guardian or**  
295 **successor conservator.** (1) The court at any time may appoint a  
296 successor guardian or successor conservator to serve immediately  
297 as ordered by the court.

298           (2) A person entitled under Section 202 or 302 to petition  
299 the court to appoint a guardian may petition the court to appoint  
300 a successor guardian. A person entitled under Section 402 to  
301 petition the court to appoint a conservator may petition the court  
302 to appoint a successor conservator.

303           (3) A successor guardian or successor conservator appointed  
304 to serve may act as guardian or conservator upon compliance with  
305 Section 108.

306           **Section 112. Effect of death, removal, or resignation of**  
307 **guardian or conservator.** (1) The appointment of a guardian or  
308 conservator terminates on the death or removal of the guardian or  
309 conservator, or when the court approves a resignation of the  
310 guardian or conservator under subsection (2).



311 (2) A guardian or conservator must petition the court to  
312 resign. The petition may include a request that the court appoint  
313 a successor. Resignation of a guardian or conservator is  
314 effective on the date the resignation is approved by the court.

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

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

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

320 **Section 113. Notice of hearing generally.** (1) Except as  
321 otherwise provided in Section 203, 303(3) or 403(3), if notice of  
322 a hearing under this act is required, the movant must give notice  
323 of the date, time, and place of the hearing to the person to be  
324 notified unless otherwise ordered by the court for good cause  
325 shown. Except as otherwise provided in this act, notice must be  
326 given in compliance with Rule 81 of the Mississippi Rules of Civil  
327 Procedure.

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

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



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

337 **Section 114. Waiver of notice.** Except as otherwise provided  
338 in this act, a person may waive notice under this act in a record  
339 signed by the person or person's attorney and filed in the  
340 proceeding. However, a respondent or ward may not waive notice  
341 under this act.

342 **Section 115. Guardian ad litem.** The court at any time may  
343 appoint a guardian ad litem for an individual. If no conflict of  
344 interest exists, a guardian ad litem may be appointed to represent  
345 multiple individuals or interests. The guardian ad litem may not  
346 be the same individual as the attorney representing the  
347 respondent. The court shall state the duties of the guardian ad  
348 litem and the reasons for the appointment.

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

352 (a) Not otherwise entitled to notice under Section 203,  
353 303(3) or 403(3); and

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

355 (2) A request under subsection (1) must include a statement  
356 showing the interest of the person making the request and the  
357 address of the person or an attorney for the person to whom notice  
358 is to be given.



359 (3) If the court approves a request under subsection (1),  
360 the court must give notice of the approval to the guardian or  
361 conservator, if one has been appointed, or to the respondent if no  
362 guardian or conservator has been appointed.

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

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

366 (a) Is or has been a debtor in a bankruptcy,  
367 insolvency, or receivership proceeding; or

368 (b) Has been convicted of:

369 (i) A felony;

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

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

374 **Section 118. Compensation and expenses; in general.** (1) An  
375 attorney for a respondent in a proceeding under this act may be  
376 awarded reasonable compensation for services and reasonable  
377 expenses in the discretion of the court.

378 (2) An attorney or other person whose services resulted in  
379 an order beneficial to a ward may be awarded reasonable  
380 compensation for services and reasonable expenses in the  
381 discretion of the court.



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

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

388 **Section 119. Compensation of guardian or conservator.** (1)  
389 Subject to court approval, a guardian may be awarded reasonable  
390 compensation for services as guardian and to reimbursement for  
391 room, board, clothing, and other appropriate expenses advanced for  
392 the benefit of the ward. If a conservator other than the guardian  
393 or a person affiliated with the guardian is appointed for the  
394 ward, reasonable compensation and reimbursement to the guardian  
395 may be approved and paid by the conservator in the discretion of  
396 the court.

397 (2) Subject to court approval, a conservator may be awarded  
398 reasonable compensation for services and reimbursement for  
399 appropriate expenses from the property of the ward in the  
400 discretion of the court.

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

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

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



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

408 (d) The conditions and circumstances under which a  
409 service was performed, including whether the service was provided  
410 outside regular business hours or under dangerous or extraordinary  
411 conditions;

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

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

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

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

420 (5) If a ward seeks to modify or terminate the guardianship  
421 or conservatorship or remove the guardian or conservator, the  
422 court may order compensation to the guardian or conservator for  
423 time spent opposing modification, termination, or removal only to  
424 the extent the court determines the opposition was reasonably  
425 necessary to protect the interest of the ward.

426 **Section 120. Liability of guardian or conservator for act of**  
427 **ward.** A guardian or conservator is not personally liable to  
428 another person solely because of the guardianship or  
429 conservatorship for an act or omission of the ward.





430           **Section 121. Petition after appointment for instruction or**  
431 **ratification.** (1) A guardian or conservator may petition the  
432 court for instruction concerning fiduciary responsibility or  
433 ratification of a particular act related to the guardianship or  
434 conservatorship.

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

438           **Section 122. Third-party acceptance of authority of guardian**  
439 **or conservator.** (1) A person may choose to not recognize the  
440 authority of a guardian or conservator to act on behalf of a ward  
441 if:

442           (a) The person has actual knowledge or a reasonable  
443 belief that the letters of guardianship or conservatorship are  
444 invalid or the conservator or guardian is exceeding or improperly  
445 exercising authority granted by the court; or

446           (b) The person has actual knowledge that the ward is  
447 subject to physical or financial abuse, neglect, exploitation, or  
448 abandonment by the guardian or conservator or a person acting for  
449 or with the guardian or conservator.

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

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



454 (b) The person makes, or has actual knowledge that  
455 another person has made, a report to a government agency providing  
456 protective services to adults or children stating a good-faith  
457 belief that the ward is subject to physical or financial abuse,  
458 neglect, exploitation, or abandonment by the guardian or  
459 conservator or a person acting for or with the guardian or  
460 conservator.

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

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

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

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

472 (2) Except as otherwise ordered by the court, a temporary  
473 substitute guardian or temporary substitute conservator appointed  
474 under this section has the powers stated in the order of  
475 appointment of the guardian or conservator. The authority of the  
476 existing guardian or conservator is suspended for as long as the  
477 temporary substitute guardian or conservator has authority.



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

481 (4) The court may remove a temporary substitute guardian or  
482 temporary substitute conservator at any time. The temporary  
483 substitute guardian or temporary substitute conservator must make  
484 any report the court requires.

485 **Section 124. Registration of order; effect.** (1) If a  
486 guardian has been appointed in another state for an individual,  
487 and a petition for guardianship for the individual is not pending  
488 in this state, the guardian appointed in the other state, after  
489 giving notice to the appointing court, may register the  
490 guardianship order in this state by filing certified copies of the  
491 order and letters of guardianship as a foreign judgment in a court  
492 of an appropriate county of this state.

493 (2) If a conservator has been appointed in another state for  
494 an individual, and a petition for conservatorship for the  
495 individual is not pending in this state, the conservator appointed  
496 for the individual in the other state, after giving notice to the  
497 appointing court, may register the conservatorship in this state  
498 by filing certified copies of the order of conservatorship,  
499 letters of conservatorship, and any bond or other asset-protection  
500 arrangement required by the court as a foreign judgment in a court  
501 of a county in which property belonging to the individual is  
502 located.



503           (3) Upon registration under this section of a guardianship  
504 or conservatorship order from another state, the guardian or  
505 conservator may exercise in this state all powers authorized in  
506 the order except as prohibited by this act and law of this state  
507 other than this act. If the guardian or conservator is not a  
508 resident of this state, the guardian or conservator may maintain  
509 an action or proceeding in this state subject to any condition  
510 imposed by this state on an action or proceeding by a nonresident  
511 party.

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

515           **Section 125. Transition provisions.** Except as otherwise  
516 provided in this chapter:

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

519           (b) This chapter applies to all guardianship and  
520 conservatorship proceedings commenced before January 1, 2020,  
521 unless the court finds that application of a particular provision  
522 of this chapter would substantially interfere with the effective  
523 conduct of the proceedings or prejudice the rights of the parties,  
524 in which case the particular provision of this chapter does not  
525 apply and the superseded law applies; and

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



528 **ARTICLE 2**

529 **GUARDIANSHIP OF MINOR**

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

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

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

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

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

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

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

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

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

549 (a) The name and address of any attorney for the  
550 parents of the minor;

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



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

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

558 (3) Notice of a hearing on a petition filed after the  
559 appointment of a guardian which seeks an order under this article,  
560 together with a copy of the petition, must be given to the  
561 respondent, the guardian, and any other person the court  
562 determines.

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

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

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

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

574 (c) Any adult with whom the minor resides;

575 (d) Each individual who had primary care or custody of  
576 the minor for at least sixty (60) days during the six (6) months  
577 immediately before the filing of the petition; and



578 (e) Any other person the court determines should  
579 receive service of notice.

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

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

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

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

593 (a) Requested by the minor who is fourteen (14) years  
594 of age or older;

595 (b) Recommended by a guardian ad litem; or

596 (c) The court determines the minor needs  
597 representation.

598 **Section 205. Rights at hearing.** (1) The court shall  
599 require a minor who is the subject of a hearing for appointment of  
600 a guardian to attend the hearing and allow the minor to  
601 participate in the hearing unless the court determines, by clear



602 and convincing evidence presented at the hearing or at a separate  
603 hearing, that:

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

608 (b) There is no practicable way for the minor to attend  
609 the hearing;

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

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

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

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

618 **Section 206. Order on appointment; limited guardianship for**

619 **minor.** (1) After a hearing under Section 202, the court may  
620 appoint a guardian for a minor, dismiss the proceeding, or take  
621 other appropriate action consistent with this act or law of this  
622 state other than this act.

623 (2) In appointing a guardian under subsection (1), the  
624 following apply:

625 (a) The court shall appoint a person nominated as  
626 guardian by a parent of the minor in a will or other record unless





627 the court finds the appointment is contrary to the best interest  
628 of the minor.

629 (b) If multiple parents have nominated different  
630 persons to serve as guardian, the court shall appoint the nominee  
631 whose appointment is in the best interest of the minor, unless the  
632 court finds that appointment of none of the nominees is in the  
633 best interest of the minor.

634 (c) If a guardian is not appointed under paragraph (a)  
635 or (b), the court shall appoint the person nominated by the minor  
636 if the minor is fourteen (14) years of age or older unless the  
637 court finds that appointment is contrary to the best interest of  
638 the minor. In that case, the court shall appoint as guardian a  
639 person whose appointment is in the best interest of the minor.

640 (3) In the interest of maintaining or encouraging  
641 involvement by a minor's parent in the minor's life, developing  
642 self-reliance of the minor, or for other good cause, the court, at  
643 the time of appointment of a guardian for the minor or later, on  
644 its own or on motion of the minor or other interested person, may  
645 create a limited guardianship by limiting the powers otherwise  
646 granted by this article to the guardian. Following the same  
647 procedure, the court may grant additional powers or withdraw  
648 powers previously granted.

649 (4) The court, as part of an order appointing a guardian for  
650 a minor, shall state rights retained by any parent of the minor,  
651 which may include contact or visitation with the minor,



652 decision-making regarding the minor's health care, education, or  
653 other matter, or access to a record regarding the minor.

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

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

657 (b) The court has modified or limited the powers of the  
658 guardian; or

659 (c) The court has removed the guardian.

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

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

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

669 (2) The duration of authority of an emergency guardian for a  
670 minor may not exceed sixty (60) days, and the emergency guardian  
671 may exercise only the powers specified in the order of  
672 appointment. The emergency guardian's authority may be extended  
673 one (1) time for not more than sixty (60) days if the court finds  
674 that the conditions for appointment of an emergency guardian in  
675 subsection (1) continue.



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

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

682 (b) Any attorney appointed under Section 204;

683 (c) Each parent of the minor;

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

686 (e) Any other person the court determines.

687 (4) The court may appoint an emergency guardian for a minor  
688 under subsection (3) without notice or a hearing only if the court  
689 finds from an affidavit or testimony that the minor's health,  
690 safety, or welfare will be substantially harmed before a hearing  
691 after notice of the appointment could be held. If the court  
692 appoints an emergency guardian to an unrepresented minor or the  
693 attorney for a represented minor without notice, notice of the  
694 appointment must be given not later than forty-eight (48) hours  
695 after the appointment to the individuals listed in subsection (3).  
696 The court must hold a hearing on continuation of a guardianship  
697 within five (5) days of any objection or other contest. Not later  
698 than five (5) days after the appointment, the court must hold a  
699 hearing on the appropriateness of the appointment.



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

703 (6) The court may remove an emergency guardian appointed  
704 under this section at any time. The emergency guardian must  
705 make any report the court requires.

706 **Section 208. Duties of guardian for minor.** (1) A guardian  
707 for a minor is a fiduciary. Except as otherwise limited by the  
708 court, a guardian for a minor has the duties and responsibilities  
709 of a parent regarding the minor's support, care, education,  
710 health, safety, and welfare. A guardian must act in the minor's  
711 best interest and exercise reasonable care, diligence, and  
712 prudence.

713 (2) A guardian for a minor must:

714 (a) Become personally acquainted with the minor and  
715 maintain sufficient contact with the minor to know and report to  
716 the court the minor's abilities, limitations, needs,  
717 opportunities, and physical and mental health;

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

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



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

728 (e) Report the condition of the minor and account for  
729 funds and other property of the minor in the guardian's possession  
730 or subject to the guardian's control, as required by court rule or  
731 ordered by the court on application of a person interested in the  
732 minor's welfare;

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

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

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

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

744 (a) Apply for and receive funds up to the amount set  
745 forth in Section 431 and benefits otherwise payable for the  
746 support of the minor to the minor's parent, guardian, or custodian  
747 under a statutory system of benefits or insurance or any private  
748 contract, devise, trust, conservatorship, or custodianship.



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

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

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

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

761 (3) The court may authorize a guardian for a minor to  
762 consent to the adoption of the minor if the minor does not have a  
763 parent.

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

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

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

771 (b) When the court finds that the standard in Section  
772 201 for appointment of a guardian is not satisfied, unless the  
773 court finds that:



774 (i) Termination of the guardianship would be  
775 harmful to the minor; and

776 (ii) The minor's interest in the continuation of  
777 the guardianship outweighs the interest of any parent of the minor  
778 in restoration of the parent's right to make decisions for the  
779 minor.

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

783 (3) A petitioner under subsection (2) must give notice of  
784 the hearing on the petition to the minor, if the minor is fourteen  
785 (14) years of age or older and is not the petitioner, and to the  
786 guardian, each parent of the minor, and any other person the court  
787 determines.

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

793 (5) When terminating a guardianship for a minor under this  
794 section, the court may issue an order providing for transitional  
795 arrangements that will assist the minor with a transition of  
796 custody and that is in the best interest of the minor.

797 (6) A guardian for a minor who is removed must cooperate  
798 with a successor guardian to facilitate transition of the



799 guardian's responsibilities and protect the best interest of the  
800 minor.

801 **ARTICLE 3**

802 **GUARDIANSHIP OF ADULT**

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

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

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

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

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

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

821 (1) A proceeding under this article may be instituted by the  
822 chancellor or clerk of the chancery court, any relative or friend  
823 of the adult, or any other interested party, including the adult





824 for whom the order is sought, by filing a sworn petition in the  
825 chancery court of the county of the residence of the adult,  
826 setting forth that the adult is alleged to be in need of a  
827 guardianship.

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

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

835           **Section 303. Notice of hearing for appointment of guardian**  
836 **for adult.** (1) On receipt of a petition under Section 302 for  
837 appointment of a guardian for a respondent who is an adult, the  
838 court must set a date, time and place for a hearing, and shall  
839 cause not less than seven (7) days' notice thereof to be given to  
840 the adult for whom the guardian is to be appointed, except that  
841 the court may, for good cause shown, direct that a shorter notice  
842 be given.

843       (2) In a proceeding on a petition under Section 302, notice  
844 of the hearing must also be given to any of the persons required  
845 to be listed in the petition under subsection (3) and any other  
846 person the court determines is entitled to notice. Failure to  
847 give notice does not preclude the court from appointing a  
848 guardian.



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

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

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

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

860 (ii) One (1) adult relative of the person for whom  
861 the guardian is to be appointed who is not the petitioner and who  
862 resides in Mississippi if that relative is within the third degree  
863 of kinship. If no relative within the third degree of kinship to  
864 the person for whom the guardian is to be appointed is found  
865 residing in the State of Mississippi, the court shall either  
866 designate some other appropriate person to receive the notice or  
867 appoint a guardian ad litem to receive notice.

868 (4) If the person for whom the guardian is to be appointed  
869 is entitled to any benefit, estate or income paid or payable by or  
870 through the Veterans' Administration of the United States  
871 government, such administration must also be given notice.

872 (5) Notice of a hearing on a petition seeking an order under  
873 this article that is filed after the appointment of a guardian,



874 together with a copy of the petition, must be given to the  
875 respondent, the guardian, and any other person the court  
876 determines.

877         **Section 304. Appointment of guardian ad litem.** The court  
878 may appoint a guardian ad litem to any respondent and allow  
879 suitable compensation payable out of the estate of the respondent,  
880 but the appointment shall not be made except when the court  
881 considers it necessary for the protection of the interest of the  
882 respondent; a judgment of any court is not void or erroneous for  
883 failure to have a guardian ad litem.

884         **Section 305. Professional evaluation.** (1) The chancery  
885 court must conduct a hearing to determine whether a guardian is  
886 needed for the respondent. Before the hearing, the court, in its  
887 discretion, may appoint a guardian ad litem to look after the  
888 interest of the person in question; the guardian ad litem must be  
889 present at the hearing and present the interests of the respondent  
890 for whose person a guardian is to be appointed.

891         (2) The chancery judge shall be the judge of the number and  
892 character of the witnesses and proof to be presented, except that  
893 the proof must include certificates made after a personal  
894 examination of the respondent by the following professionals, each  
895 of whom shall make in writing a certificate of the result of that  
896 examination to be filed with the clerk of the court and become a  
897 part of the record of the case

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



899 (b) One (1) licensed physician and either one (1)  
900 licensed psychologist, nurse practitioner, or physician's  
901 assistant.

902 (3) The personal examination may occur face-to-face or via  
903 telemedicine, but any telemedicine examination must be made using  
904 an audio-visual connection by a physician licensed in this state  
905 and as defined in Section 83-9-351. A nurse practitioner or  
906 physician assistant conducting an examination shall not also be in  
907 a collaborative or supervisory relationship, as the law may  
908 otherwise require, with the physician conducting the examination.  
909 A professional conducting an examination under this section may  
910 also be called to testify at the hearing.

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

913 (a) Present evidence and subpoena witnesses and  
914 documents;

915 (b) Examine witnesses; and

916 (c) Otherwise participate in the hearing.

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

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

921 (4) Any person may request to participate in a hearing under  
922 Section 303. The court may grant the request, with or without a  
923 hearing, on determining that the best interest of the respondent



924 will be served. The court may impose appropriate conditions on  
925 the person's participation.

926       **Section 307. Confidentiality of records.** (1) An adult  
927 subject to a proceeding for a guardianship, an attorney designated  
928 by the adult, and a person entitled to notice either under Section  
929 309(4) or a court order may access court records of the proceeding  
930 and resulting guardianship, including the guardian's plan under  
931 Section 315 and guardian's well-being report under Section 316. A  
932 person not otherwise entitled to access court records under this  
933 subsection may petition the court for access to court records of  
934 the guardianship, including the guardian's report and plan, for  
935 good cause. The court shall grant access if access is in the best  
936 interest of the respondent or ward or furthers the public interest  
937 and does not endanger the welfare or financial interests of the  
938 respondent or ward.

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

944               (a) The court;

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

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



949 (d) Unless the court orders otherwise, an agent  
950 appointed under a power of attorney for health care or power of  
951 attorney for finances in which the respondent is the principal;  
952 and

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

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

956 Appointment of a guardian for an adult will be at the discretion  
957 of the court and in the best interest of the respondent. If two  
958 (2) or more persons have requested responsibility as guardian for  
959 the adult, the court shall select as guardian the person the court  
960 considers best qualified. In determining the best qualified  
961 person, the court shall consider the person's relationship with  
962 the respondent, the person's skills, the expressed wishes of the  
963 respondent, including any designation made in a will, durable  
964 power of attorney, or health-care directive, the extent to which  
965 the person and the respondent have similar values and preferences,  
966 and the likelihood the person will be able to perform the duties  
967 of a guardian successfully. The court, acting in the best  
968 interest of the respondent, may decline to appoint as guardian a  
969 person requesting such an appointment.

970 (2) If a qualified guardian under this section cannot be  
971 determined, or if other circumstances arise where the court  
972 determines that a guardian must instead be appointed, the court,  
973 at its discretion, may appoint the chancery court clerk for the



974 county in which the proceedings were filed, to serve as the  
975 respondent's guardian. The chancery court clerk shall serve in  
976 the capacity ordered by the court unless a conflict of interest  
977 arises or the clerk presents circumstances where the court  
978 determines the clerk's recusal from appointment is permitted.

979 (3) A person that provides paid services to the respondent,  
980 or an individual who is employed by a person who provides paid  
981 services to the respondent or is the spouse, parent, or child of  
982 an individual who provides or is employed to provide paid services  
983 to the respondent, may not be appointed as guardian unless:

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

986 (b) The court finds by clear and convincing evidence  
987 that the person is the best qualified person available for  
988 appointment and the appointment is in the best interest of the  
989 respondent.

990 (4) An owner, operator, or employee of a long-term-care  
991 institution at which the respondent is receiving care may not be  
992 appointed as guardian unless the owner, operator, or employee is  
993 related to the respondent by blood, marriage, or adoption.

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

996 (a) Include a specific finding that clear and  
997 convincing evidence established that the identified needs of the  
998 respondent cannot be met by a less restrictive alternative,



999 including use of appropriate supportive services and technological  
1000 assistance; and

1001 (b) Include a specific finding that clear and  
1002 convincing evidence established the respondent was given proper  
1003 notice of the hearing on the petition.

1004 (2) A court order establishing a full guardianship for an  
1005 adult must state the basis for granting a full guardianship and  
1006 include specific findings that support the conclusion that a  
1007 limited guardianship would not meet the functional needs of the  
1008 ward.

1009 (3) A court order establishing a limited guardianship for an  
1010 adult must state the specific powers granted to the guardian.

1011 (4) The court, as part of an order establishing a  
1012 guardianship for an adult, must identify and include the contact  
1013 information for any person that subsequently is entitled to:

1014 (a) Notice of the rights of the adult under Section  
1015 310(2);

1016 (b) Notice of a change in the primary dwelling of the  
1017 adult;

1018 (c) Notice that the guardian has delegated:

1019 (i) The power to manage the care of the adult;

1020 (ii) The power to make decisions about where the  
1021 adult lives;

1022 (iii) The power to make major medical decisions on  
1023 behalf of the adult;





1024 (iv) A power that requires court approval under  
1025 Section 314; or

1026 (v) Substantially all powers of the guardian;

1027 (d) A copy of the guardian's plan under Section 315 and  
1028 the guardian's well-being report under Section 316;

1029 (e) Access to court records relating to the  
1030 guardianship;

1031 (f) Notice of the death or significant change in the  
1032 condition of the adult;

1033 (g) Notice that the court has limited or modified the  
1034 powers of the guardian; and

1035 (h) Notice of the removal of the guardian.

1036 (5) A spouse and adult children of a ward are entitled to  
1037 notice under Section 303(3) unless the court determines notice  
1038 would be contrary to the preferences or prior directions of the  
1039 ward or not in the best interest of the ward.

1040 (6) (a) If the chancellor finds from the evidence that the  
1041 adult is incapable of taking care of his person, the chancellor  
1042 shall appoint a guardian over the person.

1043 (b) The costs and expenses of the proceedings shall be  
1044 paid out of the estate of the person if a guardian is appointed.  
1045 If a guardian is appointed and the adult has no estate, or if no  
1046 guardian is appointed, then the costs and expenses must be paid by  
1047 the person instituting the proceedings.



1048           **Section 310. Notice of order of appointment; rights.** (1) A  
1049 guardian appointed under Section 309 must give the ward and all  
1050 other persons given notice under Section 309(4) a copy of the  
1051 order of appointment, together with notice of the right to request  
1052 termination or modification. The order and notice must be given  
1053 not later than fourteen (14) days after the appointment.

1054           (2) Not later than fourteen (14) days after appointment of a  
1055 guardian under Section 309, the guardian must request from the  
1056 court a statement of the rights of the ward and must give the  
1057 statement to the ward and any other person entitled to notice  
1058 under Section 303(3) or a court order. The statement must notify  
1059 the ward of the right to:

1060                   (a) Seek termination or modification of the  
1061 guardianship, or removal of the guardian, and choose an attorney  
1062 to represent the adult in these matters;

1063                   (b) Be involved in decisions affecting the adult,  
1064 including decisions about the adult's care, dwelling, activities,  
1065 or social interactions, to the extent reasonably feasible;

1066                   (c) Be involved in health-care decision-making to the  
1067 extent reasonably feasible and supported in understanding the  
1068 risks and benefits of health-care options to the extent reasonably  
1069 feasible;

1070                   (d) Be notified at least fourteen (14) days before a  
1071 change in the adult's primary dwelling or permanent move to a  
1072 nursing home, mental-health facility, or other facility that



1073 places restrictions on the individual's ability to leave or have  
1074 visitors, unless the change or move is proposed in the guardian's  
1075 plan under Section 315 or authorized by the court by specific  
1076 order;

1077 (e) Object to a change or move described in paragraph  
1078 (d) and the process for objecting;

1079 (f) Communicate, visit, or interact with others,  
1080 including receiving visitors, and making or receiving telephone  
1081 calls, personal mail, or electronic communications, including  
1082 through social media, unless:

1083 (i) The guardian has been authorized by the court  
1084 by specific order to restrict communications, visits, or  
1085 interactions;

1086 (ii) A protective order is in effect that limits  
1087 contact between the adult and a person; or

1088 (iii) The guardian has good cause to believe  
1089 restriction is necessary because interaction with a specified  
1090 person poses a risk of significant physical, psychological, or  
1091 financial harm to the adult, and the restriction is:

1092 1. For a period of not more than seven (7)  
1093 business days if the person has a family or pre-existing social  
1094 relationship with the adult; or

1095 2. For a period of not more than sixty (60)  
1096 days if the person does not have a family or pre-existing social  
1097 relationship with the adult;



1098 (g) Receive a copy of the guardian's plan under Section  
1099 315 and the guardian's well-being report under Section 316; and  
1100 (h) Object to the guardian's plan or report.

1101 **Section 311. Emergency guardian for adult.** (1) On a  
1102 petition by a person interested in an adult's welfare or a  
1103 petition filed under Section 302, the court may appoint an  
1104 emergency guardian for the adult if the court finds:

1105 (a) Appointment of an emergency guardian is likely to  
1106 prevent substantial harm to the adult's physical health, safety,  
1107 or welfare;

1108 (b) No other person appears to have authority and  
1109 willingness to act in the circumstances; and

1110 (c) There is reason to believe that a basis for  
1111 appointment of a guardian under Section 301 exists.

1112 (2) The duration of authority of an emergency guardian for  
1113 an adult may not exceed sixty (60) days, and the emergency  
1114 guardian may exercise only the powers specified in the order of  
1115 appointment. The emergency guardian's authority may be extended  
1116 once for not more than sixty (60) days if the court finds that the  
1117 conditions for appointment of an emergency guardian in subsection  
1118 (1) continue.

1119 (3) Except as otherwise provided in subsection (4),  
1120 reasonable notice of the date, time, and place of a hearing on the  
1121 petition must be given to the respondent, the respondent's  
1122 attorney, and any other person the court determines.



1123 (4) The court may appoint an emergency guardian for an adult  
1124 without notice to the adult and any attorney for the adult only if  
1125 the court finds from an affidavit or testimony that the  
1126 respondent's physical health, safety, or welfare will be  
1127 substantially harmed before a hearing with notice on the  
1128 appointment can be held. If the court appoints an emergency  
1129 guardian without giving notice under subsection (3), the court  
1130 must give notice of the appointment not later than forty-eight  
1131 (48) hours after the appointment to:

- 1132 (a) The respondent;
- 1133 (b) The respondent's attorney;
- 1134 (c) Any other person the court determines; and
- 1135 (d) Hold a hearing on the appropriateness of the  
1136 appointment not later than five (5) days after the appointment.

1137 (5) Appointment of an emergency guardian under this section  
1138 is not a final determination that a basis exists for appointment  
1139 of a guardian under Section 301.

1140 (6) The court may remove an emergency guardian appointed  
1141 under this section at any time. The emergency guardian must make  
1142 any report the court requires.

1143 **Section 312. Duties of guardian for adult.** (1) A guardian  
1144 for an adult is a fiduciary. Except as otherwise limited by the  
1145 court, a guardian for an adult shall make decisions regarding the  
1146 support, care, education, health, and welfare of the ward to the  
1147 extent necessitated by the adult's limitations.



1148           (2) A guardian for an adult promotes the self-determination  
1149 of the adult and, to the extent reasonably feasible, encourages  
1150 the adult to participate in decisions, act on the adult's own  
1151 behalf, and develop or regain the capacity to manage the adult's  
1152 personal affairs. In furtherance of this duty, the guardian may:

1153               (a) Become personally acquainted with the adult and  
1154 maintain sufficient contact with the adult through regular  
1155 visitation and other means, and to know the adult's abilities,  
1156 limitations, needs, opportunities, and physical and mental health;

1157               (b) To the extent reasonably feasible, identify the  
1158 values and preferences of the adult and involve the adult in  
1159 decisions affecting the adult, including decisions about the  
1160 adult's care, dwelling, activities, or social interactions; and

1161               (c) Make reasonable efforts to identify and facilitate  
1162 supportive relationships and services for the adult.

1163           (3) A guardian for an adult at all times shall exercise  
1164 reasonable care, diligence, and prudence when acting on behalf of  
1165 or making decisions for the adult. In furtherance of this duty,  
1166 the guardian shall:

1167               (a) Take reasonable care of the personal effects, pets,  
1168 and service or support animals of the adult and bring a proceeding  
1169 for a conservatorship if necessary to protect the adult's  
1170 property;



1171 (b) Expend funds and other property of the adult  
1172 received by the guardian for the adult's current needs for  
1173 support, care, education, health, and welfare;

1174 (c) Conserve any funds and other property of the adult  
1175 not expended under paragraph (b) for the adult's future needs, but  
1176 if a conservator has been appointed for the adult, pay the funds  
1177 and other property at least quarterly to the conservator to be  
1178 conserved for the adult's future needs; and

1179 (d) Monitor the quality of services, including  
1180 long-term care services, provided to the adult.

1181 (4) In making a decision for a ward, the guardian must make  
1182 the decision the guardian reasonably believes the adult would make  
1183 if the adult were able unless doing so would unreasonably harm or  
1184 endanger the welfare or personal or financial interests of the  
1185 adult. To determine the decision the ward would make if able, the  
1186 guardian shall consider the adult's previous or current  
1187 directions, preferences, opinions, values, and actions, to the  
1188 extent actually known or reasonably ascertainable by the guardian.

1189 (5) If a guardian for an adult cannot make a decision under  
1190 subsection (4) because the guardian does not know and cannot  
1191 reasonably determine the decision the adult probably would make if  
1192 able, or the guardian reasonably believes the decision the adult  
1193 would make would unreasonably harm or endanger the welfare or  
1194 personal or financial interests of the adult, the guardian must  
1195 act in accordance with the best interest of the adult. In



1196 determining the best interest of the adult, the guardian may  
1197 consider:

1198 (a) Information received from professionals and persons  
1199 that demonstrate sufficient interest in the welfare of the adult;

1200 (b) Other information the guardian believes the adult  
1201 would have considered if the adult were able to act; and

1202 (c) Other factors a reasonable person in the  
1203 circumstances of the adult would consider, including consequences  
1204 for others.

1205 (6) A guardian for an adult immediately must notify the  
1206 court if the condition of the adult has changed so that the adult  
1207 is capable of exercising rights previously removed.

1208 **Section 313. Powers of guardian for adult.** (1) Except as  
1209 limited by court order, a guardian for an adult may:

1210 (a) Apply for and receive funds and benefits for the  
1211 support of the adult, unless a conservator is appointed for the  
1212 adult and the application or receipt is within the powers of the  
1213 conservator;

1214 (b) Unless inconsistent with a court order, establish  
1215 the adult's place of dwelling;

1216 (c) Consent to health or other care, treatment, or  
1217 service for the adult;

1218 (d) If a conservator for the adult has not been  
1219 appointed, commence a proceeding, including an administrative





1220 proceeding, or take other appropriate action to compel a person to  
1221 support the adult or pay funds for the adult's benefit;

1222 (e) To the extent reasonable, delegate to the adult  
1223 responsibility for a decision affecting the adult's well-being;  
1224 and

1225 (f) Receive personally identifiable health-care  
1226 information regarding the adult.

1227 (2) In exercising a guardian's power under subsection (1)(b)  
1228 to establish the adult's place of dwelling, the guardian must:

1229 (a) Select a residential setting the guardian believes  
1230 the adult would select if the adult were able, in accordance with  
1231 the decision-making standard in Section 312(4) and (5). If the  
1232 guardian does not know and cannot reasonably determine what  
1233 setting the ward likely would choose if able, or if the guardian  
1234 reasonably believes the decision the adult would make would  
1235 unreasonably harm or endanger the welfare or personal or financial  
1236 interests of the adult, the guardian must choose in accordance  
1237 with Section 312(5) a residential setting that is consistent with  
1238 the adult's best interest;

1239 (b) In selecting among residential settings, give  
1240 priority to a residential setting in a location that will allow  
1241 the adult to interact with persons important to the adult and meet  
1242 the adult's needs in the least restrictive manner reasonably  
1243 feasible unless to do so would be inconsistent with the  
1244 decision-making standard in Section 312(4) and (5);



1245 (c) Establish or move the permanent place of dwelling  
1246 of the adult to a nursing home, mental-health facility, or other  
1247 facility that places restrictions on the adult's ability to leave  
1248 or have visitors only if:

1249 (i) The establishment or move is in the guardian's  
1250 plan under Section 315;

1251 (ii) The court authorizes the establishment or  
1252 move; or

1253 (iii) The guardian gives notice of the  
1254 establishment or move at least fourteen (14) days before the  
1255 establishment or move to the adult and all persons entitled to  
1256 notice under Section 309(4) or court order, and no objection is  
1257 filed;

1258 (d) Establish or move the place of dwelling of the  
1259 adult outside this state only if consistent with the guardian's  
1260 plan and authorized by the court by specific order;

1261 (e) Take action that would result in the sale of or  
1262 surrender of the lease to the primary dwelling of the adult only  
1263 if:

1264 (i) The action is specifically included in the  
1265 guardian's plan under Section 315;

1266 (ii) The court authorizes the action by specific  
1267 order; or

1268 (iii) Notice of the action was given at least  
1269 fourteen (14) days before the action to the adult and all persons



1270 entitled to the notice under Section 309(4) or court order and no  
1271 objection has been filed; and

1272 (f) Notify the court that the adult's dwelling or  
1273 permanent residence has become so damaged by fire, flood, or other  
1274 emergency circumstance that the guardian has had to temporarily or  
1275 permanently relocate the adult to another residential setting.

1276 (3) In exercising a guardian's power under subsection (1)(c)  
1277 to make health-care decisions, the guardian shall:

1278 (a) Involve the adult in decision-making to the extent  
1279 reasonably feasible, including, when practicable, by encouraging  
1280 and supporting the adult in understanding the risks and benefits  
1281 of health-care options;

1282 (b) Defer to a decision by an agent under an advanced  
1283 healthcare directive executed by the adult and cooperate to the  
1284 extent feasible with the agent making the decision; and

1285 (c) Take into account:

1286 (i) The risks and benefits of treatment options;

1287 and

1288 (ii) The current and previous wishes and values of  
1289 the adult, if known or reasonably ascertainable by the guardian.

1290 **Section 314. Special limitations on guardian's power.** (1)

1291 Unless authorized by the court by specific order, a guardian for  
1292 an adult does not have the power to revoke or amend an advanced  
1293 health-care directive or power of attorney for finances executed  
1294 by the adult. If an advanced health-care directive is in effect,



1295 unless there is a court order to the contrary, a health-care  
1296 decision of an agent takes precedence over that of the guardian  
1297 and the guardian must cooperate with the agent to the extent  
1298 feasible. If a power of attorney for finances is in effect,  
1299 unless there is a court order to the contrary, a decision by the  
1300 agent which the agent is authorized to make under the power of  
1301 attorney for finances takes precedence over that of the guardian  
1302 and the guardian must cooperate with the agent to the extent  
1303 feasible.

1304 (2) A guardian for an adult may not initiate the commitment  
1305 of the adult to a mental health facility except in accordance with  
1306 the state's procedure for involuntary civil commitment.

1307 (3) A guardian for an adult may not restrict the ability of  
1308 the adult to communicate, visit, or interact with others,  
1309 including receiving visitors and making or receiving telephone  
1310 calls, personal mail, or electronic communications, including  
1311 through social media, or participating in social activities,  
1312 unless:

1313 (a) Authorized by the court by specific order;

1314 (b) A protective order is in effect that limits contact  
1315 between the adult and a person; or

1316 (c) The guardian has good cause to believe restriction  
1317 is necessary because interaction with a specified person poses a  
1318 risk of significant physical, psychological, or financial harm to  
1319 the adult and the restriction is:



1320 (i) For a period of not more than seven (7)  
1321 business days if the person has a family or pre-existing social  
1322 relationship with the adult; or

1323 (ii) For a period of not more than sixty (60) days  
1324 if the person does not have a family or pre-existing social  
1325 relationship with the adult.

1326 **Section 315. Guardian's plan.** (1) If required by the  
1327 court, a guardian must file with the court a plan for the care of  
1328 the adult no later than ninety (90) days after the court's order  
1329 of appointment or order to file a plan. If a plan is required and  
1330 there is a significant change in circumstances, or if the guardian  
1331 seeks to deviate significantly from the guardian's plan, a  
1332 guardian must file with the court a revised plan no later than  
1333 ninety (90) days after the change in circumstances or decision to  
1334 deviate from the plan. Every plan must be based on the needs of  
1335 the adult and take into account the best interest of the adult as  
1336 well as the adult's preferences, values, and prior directions, to  
1337 the extent known to or reasonably ascertainable by the guardian.  
1338 Along with other items determined necessary by the court, the  
1339 guardian's plan must include:

1340 (a) The living arrangement, services, and supports the  
1341 guardian expects to arrange, facilitate, or continue for the  
1342 adult;

1343 (b) Social and educational activities the guardian  
1344 expects to facilitate on behalf of the adult;



1345           (c) Any person with whom the adult has a close personal  
1346 relationship or relationship involving regular visitation and any  
1347 plan the guardian has for facilitating visits with the person;

1348           (d) The anticipated nature and frequency of the  
1349 guardian's visits and communication with the adult;

1350           (e) Goals for the adult, including any goal related to  
1351 the restoration of the adult's rights, and how the guardian  
1352 anticipates achieving the goals;

1353           (f) Whether the adult has an existing plan and, if so,  
1354 whether the guardian's plan is consistent with the adult's plan;  
1355 and

1356           (g) A statement or list of the amount the guardian  
1357 proposes to charge for each service the guardian anticipates  
1358 providing to the adult.

1359           (2) A guardian must give reasonable notice of the filing of  
1360 the guardian's plan under subsection (1), and a copy of the plan,  
1361 to the adult ward, the adult ward's spouse, parents, children, and  
1362 any other person the court determines. The notice must include a  
1363 statement of the right to object to the plan and be given not  
1364 later than fourteen (14) days after the filing.

1365           (3) After the guardian's plan filed under this section is  
1366 approved by the court, the guardian must provide a copy of the  
1367 plan to the adult ward, the adult ward's spouse, parents,  
1368 children, and any other person the court determines.



1369           **Section 316. Guardian's well-being report; monitoring of**  
1370 **guardianship.** (1) If there is a significant change in  
1371 circumstances, or if the guardian seeks to deviate significantly  
1372 from the guardian's plan, a guardian must file with the court a  
1373 report in a record regarding the condition of the adult and  
1374 accounting for funds and other property in the guardian's  
1375 possession or subject to the guardian's control within ninety (90)  
1376 days after being so ordered by the court.

1377           (2) A report under subsection (1) must state:

1378                 (a) The mental, physical, and social condition of the  
1379 adult;

1380                 (b) The living arrangements of the adult during the  
1381 reporting period;

1382                 (c) A summary of any technological assistance, medical  
1383 services, educational and vocational services, and other supports  
1384 and services provided to the adult and the guardian's opinion as  
1385 to the adequacy of the adult's care;

1386                 (d) A summary of the guardian's visits with the adult,  
1387 including the dates of the visits;

1388                 (e) Action taken on behalf of the adult;

1389                 (f) The extent to which the adult has participated in  
1390 decision-making;

1391                 (g) If the adult is living in a mental health facility  
1392 or living in a facility that provides the adult with health-care  
1393 or other personal services, whether the guardian considers the



1394 facility's current plan for support, care, treatment, or  
1395 habilitation consistent with the adult's preferences, values,  
1396 prior directions, and best interest;

1397 (h) Any business relation the guardian has with a  
1398 person the guardian has paid or that has benefited from the  
1399 property of the adult;

1400 (i) A copy of the guardian's most recently approved  
1401 plan under Section 315 and a statement whether the guardian has  
1402 deviated from the plan and, if so, how the guardian has deviated  
1403 and why;

1404 (j) Plans for future care and support of the adult;

1405 (k) A recommendation as to the need for continued  
1406 guardianship and any recommended change in the scope of the  
1407 guardianship, when determined applicable by the court;

1408 (l) Whether any co-guardian or successor guardian  
1409 appointed to serve when a designated event occurs is alive and  
1410 able to serve;

1411 (m) Photographs of the adult ward and the adult ward's  
1412 living conditions, as required by the court at its discretion; and

1413 (n) Any amounts requested for reimbursement by the  
1414 guardian of fees related to the administration of the guardianship  
1415 or legal fees incurred for matters related to the guardianship.

1416 (3) The court may appoint a guardian ad litem to review a  
1417 report submitted under this section or any guardian's plan





1418 submitted under Section 315, interview the guardian or ward, or  
1419 investigate any other matter involving the guardianship.

1420 (4) Notice of the filing under this section of a guardian's  
1421 well-being report, together with a copy of the report, must be  
1422 given to the adult ward, the adult ward's spouse, parents,  
1423 children, and any other person the court determines. The notice  
1424 and report must be delivered not later than fourteen (14) days  
1425 after the filing.

1426 (5) The court must establish procedures for monitoring a  
1427 report submitted under this section and review each report at  
1428 least annually to determine whether:

1429 (a) The report provides sufficient information to  
1430 establish if the guardian has complied with the guardian's duties;

1431 (b) The guardianship should continue; and

1432 (c) The guardian's requested fees, if any, should be  
1433 approved.

1434 (6) If the court determines there is reason to believe a  
1435 guardian for an adult has not complied with the guardian's duties  
1436 or the guardianship should be modified or terminated, the court:

1437 (a) Shall notify the adult ward, the adult ward's  
1438 spouse, parents, children, and persons entitled to notice under  
1439 Section 309(4) or a court order;

1440 (b) May appoint a guardian ad litem to interview the  
1441 adult or guardian or investigate any matter involving the  
1442 guardianship; and



1443 (c) May hold a hearing to consider removal of the  
1444 guardian, termination of the guardianship, or a change in the  
1445 powers granted to the guardian or terms of the guardianship.

1446 (7) A guardian for an adult may petition the court for  
1447 approval of a report filed under this section. The court after  
1448 review may approve the report. If the court approves the report,  
1449 there is a rebuttable presumption the report is accurate as to a  
1450 matter adequately disclosed in the report.

1451 **Section 317. Removal of guardian for adult; appointment of**  
1452 **successor.** (1) Upon petition and for good cause shown, the court  
1453 may hold a hearing to consider whether to remove a guardian for an  
1454 adult for failure to perform the guardian's duties and appoint a  
1455 successor guardian to assume the duties of guardian.

1456 (2) Notice of a petition under this section must be given to  
1457 the ward, the guardian, and any other person the court determines.

1458 (3) A ward who seeks to remove the guardian and have a  
1459 successor guardian appointed has the right to choose an attorney  
1460 for representation in this matter. The court shall award  
1461 reasonable attorney's fees to the attorney for the adult as  
1462 provided in Section 118.

1463 (4) Not later than ten (10) days after appointing a  
1464 successor guardian, the court shall give notice of the appointment  
1465 to the adult ward, the adult ward's spouse, parents, children, and  
1466 any person entitled to notice under a court order.



1467           **Section 318. Termination or modification of guardianship for**

1468 **adult.** (1) Upon petition and for good cause shown, the court may  
1469 hold a hearing to consider whether termination of the guardianship  
1470 exists on the ground that a basis for appointment under Section  
1471 301 does not exist or termination would be in the best interest of  
1472 the adult or for other good cause; or modification of the  
1473 guardianship exists on the ground that the extent of protection or  
1474 assistance granted is not appropriate or for other good cause.

1475           (2) Notice of a petition under this section must be given to  
1476 the ward, the guardian, and any other person the court determines.

1477           (3) On presentation of prima facie evidence for termination  
1478 of a guardianship for an adult, the court shall order termination  
1479 unless it is proven that a basis for appointment of a guardian  
1480 under Section 301 exists.

1481           (4) The court shall modify the powers granted to a guardian  
1482 for an adult if the powers are excessive or inadequate due to a  
1483 change in the abilities or limitations of the adult, the adult's  
1484 supports, or other circumstances.

1485           (5) Unless the court otherwise orders for good cause shown,  
1486 before terminating or modifying a guardianship for an adult, the  
1487 court shall follow the same procedures to safeguard the rights of  
1488 the adult which apply to a petition for guardianship.

1489           (6) A ward who seeks to terminate or modify the terms of the  
1490 guardianship has the right to choose an attorney for  
1491 representation in the matter. The court shall award reasonable



1492 attorney's fees to the attorney for the adult as provided in  
1493 Section 118.

1494 **ARTICLE 4**

1495 **CONSERVATORSHIP**

1496 **Section 401. Basis for appointment of conservator. (1) For**  
1497 **a minor.** The court may appoint a conservator for the property or  
1498 financial affairs of a minor if the court finds by clear and  
1499 convincing evidence that appointment of a conservator is in the  
1500 minor's best interest, and:

1501 (a) If the minor has a parent, the court gives weight  
1502 to any recommendation of the parent whether an appointment is in  
1503 the minor's best interest; and

1504 (b) Either:

1505 (i) The minor owns funds or other property  
1506 requiring management or protection that otherwise cannot be  
1507 provided;

1508 (ii) The minor has or may have financial affairs  
1509 that may be put at unreasonable risk or hindered because of the  
1510 minor's age; or

1511 (iii) Appointment is necessary or desirable to  
1512 obtain or provide funds or other property needed for the support,  
1513 care, education, health, or welfare of the minor.

1514 (2) **For an adult.** The court may appoint a conservator for  
1515 the property or financial affairs of an adult if the court finds  
1516 by clear and convincing evidence that:



1517 (a) The adult is unable to manage property or financial  
1518 affairs because:

1519 (i) Of a limitation in the adult's ability to  
1520 receive and evaluate information or make or communicate decisions,  
1521 even with the use of appropriate supportive services or  
1522 technological assistance;

1523 (ii) The adult is missing, detained, incarcerated,  
1524 or unable to return to the United States;

1525 (b) Appointment is necessary to:

1526 (i) Avoid harm to the adult or significant  
1527 dissipation of the property of the adult; or

1528 (ii) Obtain or provide funds or other property  
1529 needed for the support, care, education, health, or welfare of the  
1530 adult or of an individual entitled to the adult's support; and

1531 (c) The respondent's identified needs cannot be met by  
1532 a less restrictive alternative.

1533 (3) The court shall grant a conservator only those powers  
1534 necessitated by demonstrated limitations and needs of the  
1535 respondent and issue orders that will encourage development of the  
1536 respondent's maximum self-determination and independence. The  
1537 court may not establish a full conservatorship if a limited  
1538 conservatorship or other less restrictive alternative would meet  
1539 the needs of the respondent.

1540 **Section 402. Petition for appointment of conservator;**

1541 **notice.** (1) A person interested in the estate, financial



1542 affairs, or welfare of the individual, including a person that  
1543 would be adversely affected by lack of effective management of  
1544 property or financial affairs of the individual, may petition for  
1545 the appointment of a conservator for the individual.

1546 (2) The proceeding may be instituted by the chancellor or  
1547 clerk of the chancery court, any relative or friend of the  
1548 individual, or any other interested party, including the  
1549 individual for whom the order is sought, by filing a sworn  
1550 petition in the chancery court of the residence of the individual  
1551 setting forth that the individual is alleged to be in need of a  
1552 conservatorship.

1553 (3) The petition must state the name and address of an  
1554 attorney representing the petitioner, if any, and must set forth  
1555 under the style of the case and before the body of the petition  
1556 the following language in bold or highlighted type:

1557 **"THE RELIEF SOUGHT IN THIS PETITION MAY AFFECT YOUR LEGAL**  
1558 **RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS**  
1559 **PETITION, TO ATTEND ANY HEARING, AND TO BE REPRESENTED BY AN**  
1560 **ATTORNEY."**

1561 **Section 403. Notice and hearing for appointment of**  
1562 **conservator.** (1) On receipt of a petition under Section 402 for  
1563 appointment of a conservator for a respondent, the court must set  
1564 a date, time, and place for a hearing on the petition and shall  
1565 cause not less than seven (7) days' notice thereof to be given to  
1566 the person for whom the conservator is to be appointed, except



1567 that the court may, for good cause shown, direct that a shorter  
1568 notice be given.

1569 (2) In a proceeding on a petition under Section 402, notice  
1570 of the hearing also must be given to any of the persons required  
1571 to be listed in the petition under subsection (3) and any other  
1572 person interested in the respondent's welfare the court  
1573 determines. Failure to give notice under this subsection does not  
1574 preclude the court from appointing a conservator.

1575 (3) Unless the court finds that the respondent for whom the  
1576 conservator is to be appointed is competent and joins in the  
1577 petition, the notice shall also be given to the following persons,  
1578 listed in order of preference, so that personal service is had on  
1579 the person for whom the conservator is to be appointed and on at  
1580 least one (1) relative who resides in Mississippi, other than the  
1581 petitioner:

1582 (i) Each of the spouse, children, parents and  
1583 siblings of the respondent for whom the conservator is to be  
1584 appointed, but if none of those can be found, then to:

1585 (ii) One (1) adult relative of the person for whom  
1586 the conservator is to be appointed who is not the petitioner and  
1587 who resides in Mississippi if that relative is within the third  
1588 degree of kinship. If no relative within the third degree of  
1589 kinship to the person for whom the conservator is to be appointed  
1590 is found residing in the State of Mississippi, the court must



1591 either designate some other appropriate person to receive the  
1592 notice or appoint a guardian ad litem to receive notice.

1593 (4) If the person for whom the conservator is to be  
1594 appointed is entitled to any benefit, estate or income paid or  
1595 payable by or through the Veterans' Administration of the United  
1596 States government, such administration shall also be given notice.

1597 (5) Notice of a hearing on a petition seeking an order under  
1598 this article that is filed after the appointment of a conservator,  
1599 together with a copy of the petition, must be given to the  
1600 respondent, the conservator, and any other person the court  
1601 determines.

1602 **Section 404. Order to preserve or apply property while**  
1603 **proceeding pending.** While a petition under Section 402 is  
1604 pending, after preliminary hearing and without notice to others,  
1605 the court may issue an order to preserve and apply property of the  
1606 respondent as required for the support of the respondent or an  
1607 individual who is in fact dependent on the respondent.

1608 **Section 405. Appointment and role of guardian ad litem.** The  
1609 court may appoint a guardian ad litem to any respondent and allow  
1610 suitable compensation payable out of the estate of the respondent,  
1611 but the appointment shall not be made unless the court considers  
1612 it necessary for the protection of the interest of the respondent;  
1613 a judgment of any court is not void or erroneous because of the  
1614 failure to have a guardian ad litem.





1615           **Section 406. Appointment of attorney.** If the respondent in  
1616 a proceeding for appointment of a conservator is not represented  
1617 by an attorney, the court, in its discretion, may appoint an  
1618 attorney to represent the respondent.

1619           **Section 407. Professional evaluation.** (1) The chancery  
1620 court must conduct a hearing to determine whether a conservator is  
1621 needed for the respondent. Before the hearing, the court, in its  
1622 discretion, may appoint a guardian ad litem to look after the  
1623 interest of the person in question, and the guardian ad litem must  
1624 be present at the hearing and present the interests of the  
1625 respondent.

1626           (2) The chancery judge shall be the judge of the number and  
1627 character of the witnesses and proof to be presented, except that  
1628 the proof must include certificates made after a personal  
1629 examination of the respondent by the following professionals, each  
1630 of whom must make in writing a certificate of the result of that  
1631 examination to be filed with the clerk of the court and become a  
1632 part of the record of the case

1633                   (a) Two (2) licensed physicians; or

1634                   (b) One (1) licensed physician and either one (1)  
1635 licensed psychologist, nurse practitioner, or physician's  
1636 assistant.

1637           (3) The personal examination may occur face-to-face or via  
1638 telemedicine, but any telemedicine examination must be made using  
1639 an audiovisual connection by a physician licensed in this state



1640 and as defined in Section 83-9-351. A nurse practitioner or  
1641 physician assistant conducting an examination shall not also be in  
1642 a collaborative or supervisory relationship, as the law may  
1643 otherwise require, with the physician conducting the examination.  
1644 A professional conducting an examination under this section may  
1645 also be called to testify at the hearing.

1646 (4) The personal examination requirement in subsections (2)  
1647 and (3) shall not apply if the respondent is missing, detained or  
1648 unable to return to the United States.

1649 **Section 408. Rights at hearing.** (1) At a hearing under  
1650 Section 403, the respondent may:

1651 (a) Present evidence and subpoena witnesses and  
1652 documents;

1653 (b) Examine witnesses; and

1654 (c) Otherwise participate in the hearing.

1655 (2) Unless excused by the court for good cause, a proposed  
1656 conservator must attend a hearing under Section 403.

1657 (3) A hearing under Section 403 must be closed on request of  
1658 the respondent and a showing of good cause.

1659 (4) Any person may request to participate in a hearing under  
1660 Section 403. The court may grant the request, with or without a  
1661 hearing, on determining that the best interest of the respondent  
1662 will be served. The court may impose appropriate conditions on  
1663 the person's participation.



1664           **Section 409. Confidentiality of records.** (1) An individual  
1665 subject to a proceeding for a conservatorship, an attorney  
1666 designated by the respondent or ward, and a person entitled to  
1667 notice either under Section 411(5) or court order may access court  
1668 records of the proceeding and resulting conservatorship, including  
1669 the conservator's plan under Section 419 and the conservator's  
1670 report under Section 423. A person not otherwise entitled to  
1671 access to court records under this section for good cause may  
1672 petition the court for access to court records of the  
1673 conservatorship, including the conservator's plan and report. The  
1674 court must grant access if access is in the best interest of the  
1675 respondent or ward or furthers the public interest and does not  
1676 endanger the welfare or financial interests of the respondent or  
1677 individual.

1678           (2) A report under Section 405 of a guardian ad litem or  
1679 professional evaluation under Section 407 may be confidential and  
1680 may be sealed on filing when determined necessary by the court.  
1681 If the court finds the file should be sealed, the file shall  
1682 remain available to:

1683                   (a) The court;

1684                   (b) The individual who is the subject of the report or  
1685 evaluation, without limitation as to use;

1686                   (c) The petitioner, guardian ad litem and petitioner's  
1687 and respondent's attorneys, for purposes of the proceeding;



1688 (d) Unless the court directs otherwise, a person  
1689 appointed under a power of attorney for finances in which the  
1690 respondent is identified as the principal; and

1691 (e) Any other person if it is in the public interest or  
1692 for a purpose the court orders for good cause.

1693 **Section 410. Who may be conservator.** (1) Appointment of a  
1694 conservator is at the discretion of the court, and in the best  
1695 interest of the respondent. If two (2) or more persons have  
1696 requested responsibility as conservator, the court shall select as  
1697 conservator the person the court considers best qualified. In  
1698 determining the best qualified person, the court shall consider  
1699 the person's relationship with the respondent, the person's  
1700 skills, the expressed wishes of the respondent including any  
1701 designation made in a will, durable power of attorney, or  
1702 health-care directive, the extent to which the person and the  
1703 respondent have similar values and preferences, and the likelihood  
1704 the person will be able to perform the duties of a conservator  
1705 successfully. The court, acting in the best interest of the  
1706 respondent, may decline to appoint as conservator a person  
1707 requesting the appointment.

1708 (2) If a qualified conservator cannot be determined, the  
1709 court, in its discretion, may appoint the chancery court clerk or  
1710 probate administrator for the county in which the proceedings were  
1711 filed to serve as the respondent's conservator. The chancery  
1712 court clerk or the probate administrator shall serve in the



1713 capacity ordered by the court unless a conflict of interest arises  
1714 or the clerk or the probate administrator presents circumstances  
1715 where the court determines the clerk's recusal from appointment is  
1716 permitted.

1717 (3) A person that provides paid services to the respondent,  
1718 or an individual who is employed by a person that provides paid  
1719 services to the respondent or is the spouse, parent, or child of  
1720 an individual who provides or is employed to provide paid services  
1721 to the respondent, may not be appointed as conservator unless:

1722 (a) The individual is related to the respondent by  
1723 blood, marriage, or adoption; or

1724 (b) The court finds by clear and convincing evidence  
1725 that the person is the best qualified person available for  
1726 appointment and the appointment is in the best interest of the  
1727 respondent.

1728 (4) An owner, operator, or employee of a long-term-care  
1729 institution at which the respondent is receiving care may not be  
1730 appointed as conservator unless the owner, operator, or employee  
1731 is related to the respondent by blood, marriage, or adoption.

1732 **Section 411. Order on appointment of conservator.** (1) A  
1733 court order appointing a conservator for a minor must include  
1734 findings to support appointment of a conservator and, if a full  
1735 conservatorship is granted, the reason a limited conservatorship  
1736 would not meet the identified needs of the minor.



1737           (2) A court order appointing a conservator for an adult  
1738 must:

1739                   (a) Include a specific finding that clear and  
1740 convincing evidence has established that the identified needs of  
1741 the respondent cannot be met by a less restrictive alternative,  
1742 including use of appropriate supportive services or technological  
1743 assistance; and

1744                   (b) Include a specific finding that clear and  
1745 convincing evidence established that the respondent was given  
1746 proper notice of the hearing on the petition.

1747           (3) A court order establishing a full conservatorship for an  
1748 adult must state the basis for granting a full conservatorship and  
1749 include specific findings to support the conclusion that a limited  
1750 conservatorship would not meet the functional needs of the adult.

1751           (4) A court order establishing a limited conservatorship  
1752 must state the specific property placed under the control of the  
1753 conservator and the powers granted to the conservator.

1754           (5) The court, as part of an order establishing a  
1755 conservatorship, must identify and include the contact information  
1756 for any person that subsequently is entitled to:

1757                   (a) Notice of the rights of the ward under Section  
1758 412(2);

1759                   (b) Notice of a sale of or surrender of a lease to the  
1760 primary dwelling of the individual;



1761 (c) Notice that the conservator has delegated a power  
1762 that requires court approval under Section 414 or substantially  
1763 all powers of the conservator;

1764 (d) Notice that the conservator will be unavailable to  
1765 perform the conservator's duties for more than one (1) month;

1766 (e) A copy of the conservator's plan under Section 419  
1767 and the conservator's report under Section 423;

1768 (f) Access to court records relating to the  
1769 conservatorship;

1770 (g) Notice of a transaction involving a substantial  
1771 conflict between the conservator's fiduciary duties and personal  
1772 interests;

1773 (h) Notice of the death or significant change in the  
1774 condition of the individual;

1775 (i) Notice that the court has limited or modified the  
1776 powers of the conservator; and

1777 (j) Notice of the removal of the conservator.

1778 (6) If a ward is an adult, the spouse and adult children of  
1779 the ward are entitled under subsection (5) to notice unless the  
1780 court determines notice would be contrary to the preferences or  
1781 prior directions of the ward or are not in the best interest of  
1782 the ward.

1783 (7) If a ward is a minor, each parent and adult sibling of  
1784 the minor is entitled to notice under subsection (5) unless the



1785 court determines notice would not be in the best interest of the  
1786 minor.

1787 (8) (a) If the chancellor finds from the evidence that the  
1788 person is in need of a conservatorship, the chancellor must  
1789 appoint a conservator over the person.

1790 (b) The costs and expenses of the proceedings shall be  
1791 paid out of the estate of the respondent if a conservator is  
1792 appointed. If a conservator is not appointed, the costs and  
1793 expenses shall be paid by the person instituting the proceedings.

1794 **Section 412. Notice of order of appointment; rights.** (1) A  
1795 conservator appointed under Section 411 must give to the ward and  
1796 to all other persons given notice under Section 403 a copy of the  
1797 order of appointment. The order and notice must be given not  
1798 later than fourteen (14) days after the appointment.

1799 (2) Not later than fourteen (14) days after appointment of a  
1800 conservator under Section 411, the court must give to the ward,  
1801 the conservator, and any other person entitled to notice under  
1802 Section 411(5), a statement of the rights of the ward and  
1803 procedures to seek relief if the ward is denied those rights. The  
1804 statement must be in plain language, in at least sixteen-point  
1805 font, and to the extent feasible, in a language in which the ward  
1806 is proficient. The statement must notify the ward of the right  
1807 to:





1808           (a) Seek termination or modification of the  
1809 conservatorship, or removal of the conservator, and choose an  
1810 attorney to represent the individual in these matters;

1811           (b) Participate in decision-making to the extent  
1812 reasonably feasible;

1813           (c) Receive a copy of the conservator's plan under  
1814 Section 419, the conservator's inventory under Section 420, and  
1815 the conservator's report under Section 423; and

1816           (d) Object to the conservator's inventory, plan, or  
1817 report.

1818           (3) If a conservator is appointed for the reasons stated in  
1819 Section 401(2)(a)(ii) and the ward is missing, notice under this  
1820 section to the individual is not required.

1821           **Section 413. Emergency conservator.** (1) Upon a petition by  
1822 a person interested in an individual's welfare or a petition filed  
1823 under Section 402, the court may appoint an emergency conservator  
1824 for the individual if the court finds:

1825           (a) Appointment of an emergency conservator is likely  
1826 to prevent substantial and irreparable harm to the individual's  
1827 property or financial interests;

1828           (b) No other person appears to have authority and  
1829 willingness to act in the circumstances; and

1830           (c) There is reason to believe that a basis for  
1831 appointment of a conservator under Section 401 exists.



1832           (2) The duration of authority of an emergency conservator  
1833 may not exceed sixty (60) days and the emergency conservator may  
1834 exercise only the powers specified in the order of appointment.  
1835 The emergency conservator's authority may be extended once for not  
1836 more than sixty (60) days if the court finds that the conditions  
1837 for appointment of an emergency conservator under subsection (1)  
1838 continue.

1839           (3) Except as otherwise provided in subsection (4),  
1840 reasonable notice of the date, time, and place of a hearing on the  
1841 petition must be given to the respondent, the respondent's  
1842 attorney, and any other person the court determines.

1843           (4) The court may appoint an emergency conservator without  
1844 notice to the respondent and any attorney for the respondent only  
1845 if the court finds from an affidavit or testimony that the  
1846 respondent's property or financial interests will be substantially  
1847 and irreparably harmed before a hearing with notice on the  
1848 appointment can be held. If the court appoints an emergency  
1849 conservator without giving notice under subsection (3), the court  
1850 must give notice of the appointment not later than forty-eight  
1851 (48) hours after the appointment to:

- 1852           (a) The respondent;
- 1853           (b) The respondent's attorney;
- 1854           (c) Any other person the court determines; and
- 1855           (d) Hold a hearing on the appropriateness of the  
1856 appointment not later than five (5) days after the appointment.



1857 (5) Appointment of an emergency conservator under this  
1858 section is not a determination that a basis exists for appointment  
1859 of a conservator under Section 401.

1860 (6) The court may remove an emergency conservator appointed  
1861 under this section at any time. The emergency conservator shall  
1862 make any report the court requires.

1863 **Section 414. Powers of conservator requiring court approval.**

1864 (1) Except as otherwise ordered by the court, a conservator must  
1865 give notice to persons entitled to notice under Section 411(5) and  
1866 receive specific authorization by the court before the conservator  
1867 may exercise with respect to the conservatorship the power to:

1868 (a) Make a gift;

1869 (b) Sell, encumber an interest in, or surrender a lease  
1870 to the primary dwelling of the ward;

1871 (c) Convey, release, or disclaim a contingent or  
1872 expectant interest in property, including marital property and any  
1873 right of survivorship incident to joint tenancy or tenancy by the  
1874 entireties;

1875 (d) Exercise or release a power of appointment;

1876 (e) Create a revocable or irrevocable trust of property  
1877 of the conservatorship estate, whether or not the trust extends  
1878 beyond the duration of the conservatorship, or revoke or amend a  
1879 trust revocable by the ward;



1880 (f) Exercise a right to elect an option or change a  
1881 beneficiary under an insurance policy or annuity or surrender the  
1882 policy or annuity for its cash value;

1883 (g) Exercise a right to an elective share in the estate  
1884 of a deceased spouse of the ward or renounce or disclaim a  
1885 property interest;

1886 (h) Grant a creditor priority for payment over  
1887 creditors of the same or higher class if the creditor is providing  
1888 property or services used to meet the basic living and care needs  
1889 of the ward and preferential treatment otherwise would be  
1890 impermissible under Section 427(6);

1891 (i) Make, modify, amend, or revoke the will of the ward  
1892 in compliance with Section 91-5-1 et seq.;

1893 (j) Pay premiums on any insurance policy issued on the  
1894 life of the ward if the individual is a minor, the policy was  
1895 issued during the lifetime of the individual's deceased parent,  
1896 and the court finds the policy's continuance is warranted;

1897 (k) Acquire or dispose of real property, including real  
1898 property in another state, for cash or on credit, at public or  
1899 private sale, and manage, develop, improve, exchange, partition,  
1900 change the character of, or abandon property;

1901 (l) Make repairs or alterations in a building or other  
1902 structure, demolish any improvement, or raze an existing or erect  
1903 a new wall or building if costs exceed Two Thousand Five Hundred  
1904 Dollars (\$2,500.00);



1905           (m) Subdivide or develop land, dedicate land to public  
1906 use, make or obtain the vacation of a plat and adjust a boundary,  
1907 adjust a difference in valuation of land, exchange or partition  
1908 land by giving or receiving consideration, and dedicate an  
1909 easement to public use without consideration;

1910           (n) Enter for any purpose into a lease of property as  
1911 lessor or lessee, with or without an option to purchase or renew,  
1912 for a term within or extending beyond the term of the  
1913 conservatorship;

1914           (o) Enter into a lease or arrangement for exploration  
1915 and removal of minerals or other natural resources or a pooling or  
1916 unitization agreement;

1917           (p) Borrow funds, with or without security, to be  
1918 repaid from the conservatorship estate or otherwise;

1919           (q) Pay or contest a claim, settle a claim by or  
1920 against the conservatorship estate or the ward by compromise,  
1921 arbitration, or otherwise, or release, in whole or in part, a  
1922 claim belonging to the conservatorship estate to the extent the  
1923 claim is uncollectible; or

1924           (r) Bring an action, claim, or proceeding in any  
1925 jurisdiction for the protection of the conservatorship estate or  
1926 the conservator in the performance of the conservator's duties;

1927           (2) In approving a conservator's exercise of a power listed  
1928 in subsection (1), the court must consider the ward's prior or  
1929 current directions, preferences, opinions, values, and actions, to



1930 the extent actually known or reasonably ascertainable by the  
1931 conservator. The court also must consider:

1932 (a) The financial needs of the ward and individuals who  
1933 are in fact dependent on the ward for support, and the interests  
1934 of creditors of the individual;

1935 (b) Possible reduction of income, estate, inheritance,  
1936 or other tax liabilities;

1937 (c) Eligibility for governmental assistance;

1938 (d) The previous pattern of giving or level of support  
1939 provided by the individual;

1940 (e) Any existing estate plan or lack of estate plan of  
1941 the individual;

1942 (f) The life expectancy of the individual and the  
1943 probability the conservatorship will terminate before the ward's  
1944 death; and

1945 (g) Any other relevant factor.

1946 (3) A conservator may not revoke or amend a power of  
1947 attorney for finances executed by the ward. If a power of  
1948 attorney for finances is in effect, a decision of the conservator  
1949 takes precedence over that of the attorney-in-fact only to the  
1950 extent of the authorization granted to the conservator by court  
1951 order.

1952 **Section 415. Petition for order after appointment.** A ward  
1953 or a person interested in the welfare of the individual may  
1954 petition for an order:



- 1955           (a) Requiring the conservator to furnish a bond or  
1956 collateral or additional bond or collateral or allowing a  
1957 reduction in a bond or collateral previously furnished;
- 1958           (b) Requiring an accounting for the administration of  
1959 the conservatorship estate;
- 1960           (c) Directing distribution;
- 1961           (d) Removing the conservator and appointing a temporary  
1962 or successor conservator;
- 1963           (e) Modifying the type of appointment or powers granted  
1964 to the conservator, if the extent of protection or management  
1965 previously granted is excessive or insufficient to meet the  
1966 individual's needs, including because the individual's abilities  
1967 or supports have changed;
- 1968           (f) Rejecting or modifying the conservator's plan under  
1969 Section 419, the conservator's inventory under Section 420, or the  
1970 conservator's report under Section 423; or
- 1971           (g) Granting other appropriate relief.

1972           **Section 416. Bond; oath; waiver; financial institutions;**  
1973 **alternative asset-protection arrangement.** (1) Except as  
1974 otherwise provided in subsection (3), the court shall require a  
1975 conservator to furnish a bond with a surety the court specifies,  
1976 or require an alternative asset-protection arrangement,  
1977 conditioned on faithful discharge of all duties of the  
1978 conservator. The court may waive or partially waive the  
1979 requirement if:



1980 (a) The respondent is a minor and the minor's parent  
1981 has waived the requirement in a valid holographic will or another  
1982 instrument to take effect at the parent's death that is signed by  
1983 the parent and attested by two (2) or more credible witnesses, not  
1984 including the person nominated as conservator; or

1985 (b) Part of the assets of the ward's estate are  
1986 deposited in one or more banking corporations, building and loan  
1987 associations or savings and loan associations ("financial  
1988 institutions") in this state if the deposits are fully insured by  
1989 the Federal Deposit Insurance Corporation (FDIC) and will remain  
1990 on deposit in that institution until further order of the court, a  
1991 certified copy or MEC-filed copy of the order for deposit having  
1992 been furnished to the depository or depositories and its receipt  
1993 acknowledged in a form that substantially complies with subsection  
1994 (7); or

1995 (c) The court finds that a bond or other  
1996 asset-protection arrangement is not necessary to protect the  
1997 interests of the individual subject to conservatorship. Except as  
1998 otherwise provided in subsection (3), the court may not waive the  
1999 requirement of bond or other asset-protection arrangement if the  
2000 conservator is in the business of serving as a conservator and is  
2001 being paid for the conservator's service.

2002 (2) Unless the court directs otherwise, the bond required  
2003 under this section must be in the amount of the aggregate capital  
2004 value of the conservatorship estate, plus one (1) year's estimated





2005 income, less the value of property deposited under an arrangement  
2006 requiring a court order for its removal and real property the  
2007 conservator lacks power to sell or convey without specific court  
2008 authorization. The court, in place of surety on a bond, may  
2009 accept collateral for the performance of the bond, including a  
2010 pledge of securities or a mortgage of real property.

2011 (3) A banking institution insured by the FDIC qualified to  
2012 do trust business in this state is not required to give a bond  
2013 under this section.

2014 (4) Every bond must be filed in the records of the chancery  
2015 court and may be put in suit for any breach of the condition,  
2016 whether the appointment be legal or not; and the condition shall  
2017 be as follows:

2018 "The condition of the above obligation is that if the above  
2019 bound, as conservator of \_\_\_\_\_ in \_\_\_\_\_ County  
2020 shall faithfully discharge all the duties required of him by law,  
2021 then the above obligation shall cease."

2022 The conservator must also take and subscribe on oath, at or  
2023 before the conservator's appointment, faithfully to discharge the  
2024 duties of conservator of the ward according to law.

2025 (5) A financial institution that substantially complies with  
2026 the provisions of this article when acting as a depository of  
2027 conservatorship funds is not liable to any person for so acting  
2028 except for willful default, gross negligence or malfeasance.



2029 (6) A financial institution that acts as a depository of the  
2030 funds may charge a fee for servicing the account.

2031 (7) ACKNOWLEDGMENT OF RECEIPT OF ORDER FOR DEPOSIT

2032 AND RECEIPT OF CASH FUNDS

2033 The Chancery Court of \_\_\_\_\_ County, Mississippi,  
2034 having rendered its order in the above-entitled and numbered cause  
2035 on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, designating a  
2036 banking institution insured by the Federal Deposit Insurance  
2037 Corporation as the depository of the funds of  
2038 \_\_\_\_\_, by and through  
2039 \_\_\_\_\_, as conservator, and the  
2040 conservator, having elected to use

2041 \_\_\_\_\_ (Name of Financial  
2042 Institution) as the aforesaid depository, I, acting pursuant to my  
2043 authority in and for said bank, do hereby acknowledge that I have  
2044 received a copy of the order of the chancery court, duly certified  
2045 as true and correct by the chancery clerk of \_\_\_\_\_  
2046 County, Mississippi, or a MEC-filed copy of the order of the  
2047 chancery court. I further note that said order provides that all  
2048 funds so deposited to the account shall remain on deposit until  
2049 further order of the court.

2050 Receipt is also hereby acknowledged of the funds in the  
2051 amount of \$ \_\_\_\_\_ in this matter.



2052 \_\_\_\_\_ (Name of Financial Institution)  
2053 hereby acknowledges that the funds, described above, shall not be  
2054 disbursed without further order of this court.

2055 This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

2056 STATE OF MISSISSIPPI

2057 COUNTY OF \_\_\_\_\_

2058 Personally came and appeared before me, the undersigned  
2059 authority in and for the jurisdiction aforesaid, the within named  
2060 \_\_\_\_\_ (Name of Bank Officer), who is  
2061 \_\_\_\_\_ (Job Title) of  
2062 \_\_\_\_\_ (Name of Financial Institution) and  
2063 who acknowledged to me that he/she signed and delivered the above  
2064 and foregoing Acknowledgment of Receipt of Order for Deposit and  
2065 Receipt of Cash Funds as the act and deed of said bank, he/she  
2066 being first duly authorized so to do.

2067 Given under my hand and official seal, this the  
2068 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

2069 \_\_\_\_\_

2070 Notary Public

My commission expires

2071 **Section 417. Terms and requirements of bond.** (1) The  
2072 following rules apply to the bond required under Section 416:

2073 (a) Except as otherwise provided by the bond, the  
2074 surety and the conservator are jointly and severally liable.

2075 (b) By executing a bond provided by a conservator, the  
2076 surety submits to the personal jurisdiction of the court that



2077 issued letters of office to the conservator in a proceeding  
2078 relating to the duties of the conservator in which the surety is  
2079 named as a party. Notice of the proceeding must be given to the  
2080 surety at the address shown in the records of the court in which  
2081 the bond is filed and any other address of the surety then known  
2082 to the person required to provide the notice.

2083 (c) On petition of a successor conservator or person  
2084 affected by a breach of the obligation of the bond, a proceeding  
2085 may be brought against the surety for breach of the obligation of  
2086 the bond.

2087 (d) A proceeding against the bond may be brought until  
2088 liability under the bond is exhausted.

2089 (2) A proceeding may not be brought under this section  
2090 against a surety of a bond on a matter as to which a proceeding  
2091 against the conservator is barred.

2092 (3) If a bond under Section 416 is not renewed by the  
2093 conservator, the surety or sureties immediately must give notice  
2094 to the court and the attorney for the conservatorship.

2095 **Section 418. Duties of conservator.** (1) A conservator is a  
2096 fiduciary and has duties of prudence and loyalty to the ward.

2097 (2) A conservator must promote the self-determination of the  
2098 ward and, to the extent feasible, encourage the ward to  
2099 participate in decisions, act on the ward's own behalf, and  
2100 develop or regain the capacity to manage the ward's personal  
2101 affairs.



2102           (3) In making a decision for a ward, the conservator must  
2103 make the decision the conservator reasonably believes the ward  
2104 would make if able, unless doing so would fail to preserve the  
2105 resources needed to maintain the ward's well-being and lifestyle  
2106 or otherwise unreasonably harm or endanger the welfare or personal  
2107 or financial interests of the ward. To determine the decision the  
2108 ward would make if able, the conservator must consider the ward's  
2109 prior or current directions, preferences, opinions, values, and  
2110 actions, to the extent actually known or reasonably ascertainable  
2111 by the conservator.

2112           (4) If a conservator cannot make a decision under subsection  
2113 (3) because the conservator does not know and cannot reasonably  
2114 determine the decision the ward probably would make if able, or  
2115 the conservator reasonably believes the decision the individual  
2116 would make would fail to preserve resources needed to maintain the  
2117 ward's well-being and lifestyle or otherwise unreasonably harm or  
2118 endanger the welfare or personal or financial interests of the  
2119 ward, the conservator shall act in accordance with the best  
2120 interest of the ward. In determining the best interest of the  
2121 ward, the conservator shall consider:

2122           (a) Information received from professionals and persons  
2123 who demonstrate sufficient interest in the welfare of the ward;

2124           (b) Other information the conservator believes the ward  
2125 would have considered if the ward were able to act; and



2126 (c) Other factors a reasonable person in the  
2127 circumstances of the ward would consider, including consequences  
2128 for others.

2129 (5) Except when inconsistent with the conservator's duties  
2130 under subsections (1) through (4), and where investments other  
2131 than in FDIC-insured investments are permitted in the court's  
2132 order approving the conservator's plan, a conservator must invest  
2133 and manage the conservatorship estate as a prudent investor would,  
2134 by considering:

2135 (a) The circumstances of the ward and the  
2136 conservatorship estate;

2137 (b) General economic conditions;

2138 (c) The possible effect of inflation or deflation;

2139 (d) The expected tax consequences of an investment  
2140 decision or strategy;

2141 (e) The role of each investment or course of action in  
2142 relation to the conservatorship estate as a whole;

2143 (f) The expected total return from income and  
2144 appreciation of capital;

2145 (g) The need for liquidity, regularity of income, and  
2146 preservation or appreciation of capital; and

2147 (h) The special relationship or value, if any, of  
2148 specific property to the ward.

2149 (6) The propriety of a conservator's investment and  
2150 management of the conservatorship estate is determined in light of



2151 the facts and circumstances existing when the conservator decides  
2152 or acts and not by hindsight.

2153 (7) A conservator must make a reasonable effort to verify  
2154 facts relevant to the investment and management of the  
2155 conservatorship estate.

2156 (8) A conservator that has special skills or expertise, or  
2157 is named conservator in reliance on the conservator's  
2158 representation of special skills or expertise, has a duty to use  
2159 the special skills or expertise in carrying out the conservator's  
2160 duties.

2161 (9) In investing, selecting specific property for  
2162 distribution, and invoking a power of revocation or withdrawal for  
2163 the use or benefit of the ward, a conservator must consider any  
2164 estate plan of the ward known or reasonably ascertainable to the  
2165 conservator and may examine the will or other donative,  
2166 nominative, or appointive instrument of the individual.

2167 (10) A conservator must maintain insurance on the insurable  
2168 real and personal property of the ward, unless the conservatorship  
2169 estate lacks sufficient funds to pay for insurance or the court  
2170 finds:

2171 (a) The property lacks sufficient equity; or

2172 (b) Insuring the property would unreasonably dissipate  
2173 the conservatorship estate or otherwise not be in the best  
2174 interest of the ward.



2175 (11) A conservator has access to and authority over a  
2176 digital asset of the ward to the extent provided by the Revised  
2177 Uniform Fiduciary Access to Digital Assets Act (Title 91, Chapter  
2178 23, Mississippi Code of 1972).

2179 (12) A conservator for an adult must notify the court if the  
2180 condition of the adult has changed so that the adult has become  
2181 capable of autonomy in exercising rights previously delegated to  
2182 the conservator. The notice must be given immediately on learning  
2183 of the change.

2184 **Section 419. Conservator's plan.** (1) If required by the  
2185 court, a conservator must file with the court a plan for  
2186 investing, protecting, managing, expending, and distributing the  
2187 assets of the conservatorship estate no later than ninety (90)  
2188 days after the court's order of appointment or order to file a  
2189 plan. If a plan is required and there is a significant change in  
2190 circumstances, or if the conservator seeks to deviate  
2191 significantly from the conservator's plan, a conservator must file  
2192 with the court a revised plan no later than ninety (90) days after  
2193 the change in circumstances or decision to deviate from the plan.  
2194 Every plan must be based on the needs of the ward and take into  
2195 account the best interest of the ward as well as the ward's  
2196 preferences, values, and prior directions, to the extent known to  
2197 or reasonably ascertainable by the conservator. Along with other  
2198 items determined necessary by the court, the conservator's plan  
2199 must include:





2200 (a) A budget containing projected expenses and  
2201 resources, including an estimate of the total amount of fees the  
2202 conservator anticipates charging per year and a statement or list  
2203 of the amount the conservator proposes to charge for each service  
2204 the conservator anticipates providing to the individual;

2205 (b) How the conservator will involve the individual in  
2206 decisions about management of the conservatorship estate;

2207 (c) Any step the conservator plans to take to develop  
2208 or restore the ability of the ward to manage the conservatorship  
2209 estate; and

2210 (d) An estimate of the duration of the conservatorship.

2211 (2) A conservator must give reasonable notice of the filing  
2212 of the conservator's plan under subsection (1), together with a  
2213 copy of the plan, to the ward, a person entitled to notice under  
2214 Section 411(5) or a court order, and any other person the court  
2215 determines. The notice must include a statement of the right to  
2216 object to the plan and be given not later than fourteen (14) days  
2217 after the filing.

2218 (3) A ward and any person entitled under subsection (2) to  
2219 receive notice and a copy of the conservator's plan may object to  
2220 the plan.

2221 (4) The court must review the conservator's plan filed under  
2222 subsection (1) and determine whether to approve the plan or  
2223 require a new plan. In deciding whether to approve the plan, the  
2224 court shall consider objections made under subsection (3) and



2225 whether the plan is consistent with the conservator's duties and  
2226 powers. The court may not approve the plan until thirty (30) days  
2227 after its filing.

2228 (5) After a conservator's plan under this section is  
2229 approved by the court, the conservator must provide a copy of the  
2230 plan to the ward, a person entitled to notice under Section 411(5)  
2231 or a court order, and any other person the court determines.

2232 **Section 420. Inventory; records.** (1) Unless the inventory  
2233 requirement has been waived, not later than ninety (90) days after  
2234 appointment, a conservator must prepare and file with the  
2235 appointing court a detailed inventory of the conservatorship  
2236 estate, together with an oath or affirmation that the inventory is  
2237 believed to be complete and accurate as far as information  
2238 permits.

2239 (2) A conservator must give reasonable notice of the filing  
2240 of an inventory to the ward, a person entitled to notice under  
2241 Section 411(5) or a court order, and any other person the court  
2242 determines. The notice must be given not later than fourteen (14)  
2243 days after the filing.

2244 (3) A conservator must keep records of the administration of  
2245 the conservatorship estate and make them available for examination  
2246 on reasonable request of the ward, a guardian for the ward, or any  
2247 other person the conservator or the court determines.

2248 **Section 421. Administrative powers of conservator not**  
2249 **requiring court approval.** (1) Except as otherwise provided in



2250 Section 414 or qualified or limited in the court's order of  
2251 appointment and stated in the letters of conservatorship, a  
2252 conservator has all powers granted in this section and any  
2253 additional power granted to a trustee by law of this state other  
2254 than this act.

2255 (2) The court may authorize the conservator in a court order  
2256 to execute powers not listed in Section 414 without prior specific  
2257 court authorization or confirmation, including by way of  
2258 illustration, but not limited to, the following:

2259 (a) To collect, hold, and retain property, including  
2260 property in which the conservator has a personal interest and real  
2261 property in another state, until the conservator determines  
2262 disposition of the property should be made;

2263 (b) To receive additions to the conservatorship estate;

2264 (c) To continue or participate in the operation of a  
2265 business or other enterprise;

2266 (d) To acquire an undivided interest in property in  
2267 which the conservator, in a fiduciary capacity, holds an undivided  
2268 interest;

2269 (e) To acquire or dispose of personal property;

2270 (f) To continue to invest assets;

2271 (g) To deposit funds or other property in a financial  
2272 institution, including one operated by the conservator;



2273                   (h) To grant an option involving disposition of  
2274 property or accept or exercise an option for the acquisition of  
2275 property;

2276                   (i) To vote a security, in person or by general or  
2277 limited proxy;

2278                   (j) To pay a call, assessment, or other sum chargeable  
2279 or accruing against or on account of a security;

2280                   (k) To sell or exercise a stock subscription or  
2281 conversion right;

2282                   (l) To consent, directly or through a committee or  
2283 agent, to the reorganization, consolidation, merger, dissolution,  
2284 or liquidation of a corporation or other business enterprise;

2285                   (m) To hold a security in the name of a nominee or in  
2286 other form without disclosure of the conservatorship so that title  
2287 to the security may pass by delivery;

2288                   (n) To insure:

2289                   (i) The conservatorship estate, in whole or in  
2290 part, against damage or loss in accordance with Section 418(10);  
2291 and

2292                   (ii) The conservator against liability with  
2293 respect to a third person;

2294                   (o) Advance funds for the protection of the  
2295 conservatorship estate or the ward and all expenses, losses, and  
2296 liability sustained in the administration of the conservatorship



2297 estate or because of holding any property for which the  
2298 conservator has a lien on the conservatorship estate;

2299 (p) Pay a tax, assessment, compensation of the  
2300 conservator or any guardian, and other expense incurred in the  
2301 collection, care, administration, and protection of the  
2302 conservatorship estate;

2303 (q) Pay a sum distributable to the ward or an  
2304 individual who is in fact dependent on the ward by paying the sum  
2305 to the distributee or for the use of the distributee:

2306 (i) To the guardian for the distributee;

2307 (ii) To the custodian of the distributee under the  
2308 Uniform Transfers to Minors Act, Section 91-20-1 et seq.; or

2309 (iii) If there is no guardian, custodian, or  
2310 custodial trustee, to a relative or other person having physical  
2311 custody of the distributee;

2312 (r) Defend an action, claim, or proceeding in any  
2313 jurisdiction for the protection of the conservatorship estate or  
2314 the conservator in the performance of the conservator's duties;

2315 (s) Structure the finances of the ward to establish  
2316 eligibility for a public benefit, including by making gifts  
2317 consistent with the ward's preferences, values, and prior  
2318 directions, if the conservator's action does not jeopardize the  
2319 ward's welfare and otherwise is consistent with the conservator's  
2320 duties; and



2321 (t) Execute and deliver any instrument that will  
2322 accomplish or facilitate the exercise of a power of the  
2323 conservator.

2324 **Section 422. Distribution from conservatorship estate.**

2325 Except as otherwise provided in Section 414 or qualified or  
2326 limited in the court's order of appointment and stated in the  
2327 letters of conservatorship, and unless contrary to a conservator's  
2328 plan under Section 419, the conservator may expend or distribute  
2329 income or principal of the conservatorship estate for the support,  
2330 care, education, health, or welfare of the ward or an individual  
2331 who is in fact dependent on the ward, including the payment of  
2332 child or spousal support, without specific court authorization or  
2333 confirmation in accordance with the following rules:

2334 (a) The conservator shall consider a recommendation  
2335 relating to the appropriate standard of support, care, education,  
2336 health, or welfare for the ward or individual who is dependent on  
2337 the ward, made by a guardian for the ward, if any, and, if the  
2338 ward is a minor, a recommendation made by a parent of the minor.  
2339 If the minor has a father or mother, the court shall determine  
2340 whether the expense of maintaining and educating the minor shall  
2341 be borne by the ward's estate.

2342 (b) The conservator acting in compliance with the  
2343 conservator's duties under Section 418 is not liable for an  
2344 expenditure or distribution made based on a recommendation under



2345 paragraph (a) unless the conservator knows the expenditure or  
2346 distribution is not in the best interest of the ward.

2347 (c) In making an expenditure or distribution under this  
2348 section, the conservator must consider:

2349 (i) The size of the conservatorship estate, the  
2350 estimated duration of the conservatorship, and the likelihood the  
2351 ward, at some future time, may be fully self-sufficient and able  
2352 to manage the individual's financial affairs and the  
2353 conservatorship estate;

2354 (ii) The accustomed standard of living of the ward  
2355 and individual who is dependent on the ward;

2356 (iii) Other funds or sources used for the support  
2357 of the ward; and

2358 (iv) The preferences, values, and prior directions  
2359 of the ward.

2360 (d) Funds expended or distributed under this section  
2361 may be paid by the conservator to any person, including the ward,  
2362 as reimbursement for expenditures the conservator might have made,  
2363 or in advance for services to be provided to the ward or  
2364 individual who is dependent on the ward if it is reasonable to  
2365 expect the services will be performed and advance payment is  
2366 customary or reasonably necessary under the circumstances.

2367 **Section 423. Conservator's report and accounting;**

2368 **monitoring.** (1) Except as otherwise provided under subsection  
2369 (11), a conservator must file a report in a record regarding the



2370 administration of the conservatorship estate with the court  
2371 annually unless the court otherwise directs, if provided by will,  
2372 or made necessary by resignation or removal, or termination of the  
2373 conservatorship. A conservator must petition the court for  
2374 approval of a report filed under this section. The court, after  
2375 review, may approve the report.

2376 (2) A report under subsection (1) must state or contain:

2377 (a) An accounting that lists property included in the  
2378 conservatorship estate and the receipts, disbursements,  
2379 liabilities, and distributions during the period for which the  
2380 report is made;

2381 (b) A list of the services provided to the ward;

2382 (c) A statement whether the conservator has deviated  
2383 from the plan and, if so, how the conservator has deviated and  
2384 why;

2385 (d) A recommendation as to the need for continued  
2386 conservatorship and any recommended change in the scope of the  
2387 conservatorship;

2388 (e) Anything of more than de minimis value which the  
2389 conservator, any individual who resides with the conservator, or  
2390 the spouse, parent, child, or sibling of the conservator has  
2391 received from a person providing goods or services to the ward;  
2392 and





2393 (f) Any business relationship the conservator has with  
2394 a person the conservator has paid or that has benefited from the  
2395 property of the ward.

2396 (3) The court, in its discretion, may request a copy of the  
2397 most recent reasonably available financial statements evidencing  
2398 the status of bank accounts, investment accounts, and mortgages or  
2399 other debts of the ward with all but the last four (4) digits of  
2400 the account numbers and social security number redacted;

2401 (4) The court may appoint a guardian ad litem to review a  
2402 report under this section or a conservator's plan under Section  
2403 419, to interview the ward or conservator, or to investigate any  
2404 other matter involving the conservatorship. In connection with  
2405 the report, the court may order the conservator to submit the  
2406 conservatorship estate to appropriate examination in a manner the  
2407 court directs.

2408 (5) Reasonable notice of the filing under this section of a  
2409 conservator's report, together with a copy of the report, must be  
2410 provided to the ward, a person entitled to notice under Section  
2411 411(5) or a court order, and other persons the court determines.  
2412 The notice and report must be given not later than fourteen (14)  
2413 days after filing.

2414 (6) The court may establish procedures for monitoring a  
2415 report submitted under this section and review each report at  
2416 least annually unless otherwise directed by the court. The court  
2417 must consider whether:



2418 (a) The reports provide sufficient information to  
2419 establish that the conservator has complied with the conservator's  
2420 duties;

2421 (b) The conservatorship should continue; and

2422 (c) The conservator's requested fees, if any, should be  
2423 approved.

2424 (7) If the court determines there is reason to believe a  
2425 conservator has not complied with the conservator's duties or the  
2426 conservatorship should not continue, the court:

2427 (a) Shall notify the ward, the conservator, and any  
2428 other person entitled to notice under Section 411(5) or a court  
2429 order;

2430 (b) May require additional information from the  
2431 conservator;

2432 (c) May appoint a guardian ad litem to interview the  
2433 ward or conservator or investigate any matter involving the  
2434 conservatorship; and

2435 (d) Consistent with Sections 429 and 430, may hold a  
2436 hearing to consider removal of the conservator, termination of the  
2437 conservatorship, or a change in the powers granted to the  
2438 conservator or terms of the conservatorship.

2439 (8) If the court has reason to believe fees requested by a  
2440 conservator are not reasonable, the court shall hold a hearing to  
2441 determine whether to adjust the requested fees.



2442 (9) An order may be entered, after notice and consideration  
2443 by the court, approving a report of a conservator filed under this  
2444 section.

2445 (10) A conservator may seek an order, after notice and  
2446 hearing, approving a report filed under this section that  
2447 discharges the conservator from all liabilities, claims, and  
2448 causes of action by a person given notice of the report and the  
2449 hearing as to a matter adequately disclosed in the report.

2450 (11) When the funds and personal property of the ward do not  
2451 exceed the sum or value of Ten Thousand Dollars (\$10,000.00) and  
2452 there is no foreseeable prospect of further receipt to come into  
2453 the hands of the conservator other than interest thereon, or in  
2454 conservatorships in which the only funds on hand or to be received  
2455 by the guardian are funds paid or to be paid by a government  
2456 agency providing protective services to adults or children for the  
2457 benefit of the ward, the chancery court or chancellor in vacation,  
2458 for good cause shown, in the chancellor's discretion and upon  
2459 being satisfied it is to the best interest and welfare of the  
2460 ward, may authorize the guardian to dispense with further annual  
2461 accounts, except for a final account.

2462 **Section 424. Attempted transfer of property by the ward.**

2463 (1) The interest of a ward in property included in the  
2464 conservatorship estate is not transferrable or assignable by the  
2465 ward and is not subject to levy, garnishment, or similar process  
2466 for claims against the ward unless allowed under Section 427.



2467           (2) If a ward enters into a contract after the right to  
2468 enter the contract has been delegated to another by the court, the  
2469 contract is void against the ward and the ward's property but is  
2470 enforceable against the person that contracted with the ward.

2471           (3) A person other than the conservator that deals with a  
2472 ward with respect to property included in the conservatorship  
2473 estate is entitled to protection provided by law of this state  
2474 other than this act.

2475           **Section 425. Transaction involving conflict of interest.** A  
2476 transaction involving a conservatorship estate which is affected  
2477 by a substantial conflict between the conservator's fiduciary  
2478 duties and personal interests is voidable unless the transaction  
2479 is authorized by court order after notice to persons entitled to  
2480 notice under Section 411(5) or a court order. A transaction  
2481 affected by a substantial conflict includes a sale, encumbrance,  
2482 or other transaction involving the conservatorship estate entered  
2483 into by the conservator, an individual with whom the conservator  
2484 resides, the spouse, descendant, sibling, or attorney of the  
2485 conservator, or a corporation or other enterprise in which the  
2486 conservator has a substantial beneficial interest.

2487           **Section 426. Protection of person dealing with conservator.**

2488           (1) A person that assists or deals with a conservator in good  
2489 faith and for value in any transaction, other than a transaction  
2490 requiring a court order under Section 414, is protected as though  
2491 the conservator properly exercised any power in question. Mere



2492 knowledge by a person that the person is dealing with a  
2493 conservator does not require the person to inquire into the  
2494 existence of authority of the conservator or the propriety of the  
2495 conservator's exercise of authority, but restrictions on authority  
2496 stated in letters of conservatorship, or otherwise provided by  
2497 law, are effective as to the person. A person that pays or  
2498 delivers property to a conservator is not responsible for proper  
2499 application of the property.

2500 (2) Protection under subsection (1) extends to a procedural  
2501 irregularity or jurisdictional defect in the proceeding leading to  
2502 the issuance of letters of conservatorship and does not substitute  
2503 for protection for a person that assists or deals with a  
2504 conservator provided by comparable provisions in law of this state  
2505 other than this act relating to a commercial transaction or  
2506 simplifying a transfer of securities by a fiduciary.

2507 **Section 427. Presentation and allowance of claim.** (1) A  
2508 conservator may pay, or secure by encumbering property included in  
2509 the conservatorship estate, a claim against the conservatorship  
2510 estate or the ward arising before or during the conservatorship,  
2511 on presentation and allowance in accordance with the priorities  
2512 under subsection (5) or (6). A claimant may present a claim by  
2513 filing the claim with the court, in a form acceptable to the  
2514 court, and sending or delivering a copy of the claim to the  
2515 conservator.



2516 (2) A presented claim is allowed if it is not disallowed in  
2517 whole or in part by the conservator in a record sent or delivered  
2518 to the claimant not later than ninety (90) days after its  
2519 presentation. Before payment, the conservator may change an  
2520 allowance of the claim to a disallowance in whole or in part, but  
2521 not after allowance under a court order or order directing payment  
2522 of the claim. Presentation of a claim tolls the running of a  
2523 statute of limitations that has not expired relating to the claim  
2524 until thirty (30) days after disallowance of the claim.

2525 (3) A claimant whose claim has not been paid may petition  
2526 the court to determine the claim at any time before it is barred  
2527 by a statute of limitations, and the court may order its  
2528 allowance, payment, or security by encumbering property included  
2529 in the conservatorship estate. If a proceeding is pending against  
2530 the ward at the time of appointment of the conservator or is  
2531 initiated after the appointment, the moving party must give the  
2532 conservator notice of the proceeding if it could result in  
2533 creating a claim against the conservatorship estate.

2534 (4) If a conservatorship estate is likely to be exhausted  
2535 before all existing claims are paid, the provisions of the law on  
2536 proceedings to insolvency and distribution of assets of insolvent  
2537 estates shall, as far as applicable and not otherwise provided, be  
2538 observed and enforced.

2539 (5) When the claims are established and the amount of assets  
2540 ascertained, the court shall adjudge the pro rata share of each



2541 claimant, deducting first the preference claims in the following  
2542 order:

2543 (a) Costs and expenses of administration;

2544 (b) A claim of the federal or state government having  
2545 priority under law other than this article;

2546 (c) A claim incurred by the conservator for support,  
2547 care, education, health, or welfare previously provided to the  
2548 ward or an individual who is in fact dependent on the ward;

2549 (d) A claim arising before the conservatorship; and

2550 (e) All other claims.

2551 (6) Preference may not be given in the payment of a claim  
2552 under subsection (5) over another claim of the same class. A  
2553 claim due and payable may not be preferred over a claim not due  
2554 unless:

2555 (a) Doing so would leave the conservatorship estate  
2556 without sufficient funds to pay the basic living and health-care  
2557 expenses of the ward; and

2558 (b) The court authorizes the preference under Section  
2559 414(1)(h).

2560 (7) If assets of a conservatorship estate are adequate to  
2561 meet all existing claims, the court, acting in the best interest  
2562 of the ward, may order the conservator to grant a security  
2563 interest in the conservatorship estate for payment of a claim at a  
2564 future date.



2565           **Section 428. Personal liability of conservator.** (1) Except  
2566 as otherwise agreed by a conservator, the conservator is not  
2567 personally liable on a contract properly entered into in a  
2568 fiduciary capacity in the course of administration of the  
2569 conservatorship estate unless the conservator fails to reveal the  
2570 conservator's representative capacity in the contract or before  
2571 entering into the contract.

2572           (2) A conservator may be personally liable for an obligation  
2573 arising from control of property of the conservatorship estate or  
2574 an act or omission occurring in the course of administration of  
2575 the conservatorship estate only if the conservator is personally  
2576 grossly negligent or in breach of fiduciary duty.

2577           (3) A claim based on a contract entered into by a  
2578 conservator in a fiduciary capacity, an obligation arising from  
2579 control of property included in the conservatorship estate, or a  
2580 tort committed in the course of administration of the  
2581 conservatorship estate may be asserted against the conservatorship  
2582 estate in a proceeding against the conservator in a fiduciary  
2583 capacity, whether or not the conservator is personally liable for  
2584 the claim.

2585           (4) A question of liability between a conservatorship estate  
2586 and the conservator personally may be determined in a proceeding  
2587 for accounting, surcharge, or indemnification or another  
2588 appropriate proceeding or action.





2589           **Section 429. Removal of conservator; appointment of**  
2590 **successor.** (1) The court may remove a conservator for failure to  
2591 perform the conservator's duties or other good cause and appoint a  
2592 successor conservator to assume the duties of the conservator.

2593           (2) The court must hold a hearing to determine whether to  
2594 remove a conservator and appoint a successor on:

2595           (a) A petition of the ward, conservator, or person  
2596 interested in the welfare of the ward that contains allegations  
2597 which, if true, would support a reasonable belief that removal of  
2598 the conservator and appointment of a successor may be appropriate,  
2599 but the court may decline to hold a hearing if a petition based on  
2600 the same or substantially similar facts was filed during the  
2601 preceding six (6) months;

2602           (b) Communication from the ward, conservator, or person  
2603 interested in the welfare of the ward which supports a reasonable  
2604 belief that removal of the conservator and appointment of a  
2605 successor may be appropriate; or

2606           (c) Determination by the court that a hearing would be  
2607 in the best interest of the ward.

2608           (3) Notice of a petition under subsection (2)(a) must be  
2609 given to the ward, the conservator, and any other person the court  
2610 determines.

2611           (4) A ward who seeks to remove the conservator and have a  
2612 successor appointed has the right to choose an attorney to  
2613 represent the ward in this matter. If the ward is not represented



2614 by an attorney, the court may appoint an attorney under the same  
2615 conditions as in Section 406. The court may award reasonable  
2616 attorney's fees to the attorney as provided in Section 118.

2617 (5) In selecting a successor conservator, the court must  
2618 follow the priorities under Section 410.

2619 **Section 430. Termination or modification of conservatorship.**

2620 (1) A conservatorship must be terminated when the minor becomes  
2621 an adult, becomes emancipated, or dies; the termination must  
2622 comply with Section 423, but a conservatorship may continue into  
2623 adulthood when the court finds the ward qualifies for  
2624 conservatorship as an adult under the provisions of subsections  
2625 (5) and (6).

2626 (2) A ward, the conservator, or a person interested in the  
2627 welfare of the individual may petition for:

2628 (a) Termination of the conservatorship on the ground  
2629 that a basis for appointment under Section 401 does not exist or  
2630 termination would be in the best interest of the ward or for other  
2631 good cause; or

2632 (b) Modification of the conservatorship on the ground  
2633 that the extent of protection or assistance granted is not  
2634 appropriate or for other good cause shown.

2635 (3) The court must hold a hearing to determine whether  
2636 termination or modification of a conservatorship is appropriate  
2637 on:



2638           (a) A petition that contains allegations which, if  
2639 true, would support a reasonable belief that termination or  
2640 modification of the conservatorship may be appropriate, but the  
2641 court may decline to hold a hearing if a petition based on the  
2642 same or substantially similar facts was filed within the preceding  
2643 six (6) months;

2644           (b) A communication from the ward, conservator, or  
2645 person interested in the welfare of the ward which supports a  
2646 reasonable belief that termination or modification of the  
2647 conservatorship may be appropriate, including because the  
2648 functional needs of the ward or supports or services available to  
2649 the ward have changed;

2650           (c) A report from a guardian or conservator which  
2651 indicates that termination or modification may be appropriate  
2652 because the functional needs or supports or services available to  
2653 the ward have changed or other less restrictive alternative is  
2654 available; or

2655           (d) A determination by the court that a hearing would  
2656 be in the best interest of the ward.

2657           (4) Notice of a petition under this section must be given to  
2658 the ward, the conservator, and any other person the court  
2659 determines.

2660           (5) On presentation of prima facie evidence for termination  
2661 of a conservatorship, the court must order termination unless it



2662 is proven that a basis for appointment of a conservator under  
2663 Section 401 exists.

2664 (6) The court must modify the powers granted to a  
2665 conservator if the powers are excessive or inadequate due to a  
2666 change in the abilities or limitations of the ward, the ward's  
2667 supports, or other circumstances.

2668 (7) Unless the court otherwise orders for good cause, before  
2669 terminating a conservatorship, the court shall follow the same  
2670 procedures to safeguard the rights of the ward which apply to a  
2671 petition for conservatorship.

2672 (8) A ward who seeks to terminate or modify the terms of the  
2673 conservatorship has the right to choose an attorney to represent  
2674 the ward in this matter. If the ward is not represented by an  
2675 attorney, the court may appoint an attorney under the same  
2676 conditions as in Section 406. The court may award reasonable  
2677 attorney's fees to the attorney as provided in Section 118.

2678 (9) On termination of a conservatorship other than by reason  
2679 of the death of the ward, property of the conservatorship estate  
2680 passes to the ward. The order of termination must direct the  
2681 conservator to file a final report and petition for discharge on  
2682 approval by the court of the final report.

2683 (10) If a ward dies testate, the conservator must deliver  
2684 the will to the named representative and certify that delivery to  
2685 the court. If the ward dies intestate, Section 91-7-68 governs.



2686           **Section 431. Transfer for benefit of minor without**  
2687 **appointment of conservator.** (1) Unless a person required to  
2688 transfer funds or other property to a minor knows that a  
2689 conservator for the minor has been appointed or a proceeding is  
2690 pending for conservatorship, the person may transfer an amount or  
2691 value not exceeding Twenty-five Thousand Dollars (\$25,000.00) in a  
2692 twelve-month period to:

2693                   (a) A person who has care or custody of the minor and  
2694 with whom the minor resides;

2695                   (b) A guardian for the minor;

2696                   (c) A custodian under the Uniform Transfers to Minors  
2697 Act, Section 91-20-1 et seq.; or

2698                   (d) A financial institution as a deposit in an account  
2699 or certificate solely in the name of the minor; notice of the  
2700 deposit must be given to the minor; or

2701                   (e) An Achieving a Better Life Experience (ABLE)  
2702 account.

2703           (2) A person that transfers funds or other property under  
2704 this section is not responsible for its proper application.

2705           (3) A person that receives funds or other property for a  
2706 minor under subsection (1)(a) or (b) may apply it only to the  
2707 support, care, education, health, or welfare of the minor, and may  
2708 not derive a personal financial benefit from it, except for  
2709 reimbursement for necessary expenses. Funds not applied for these  
2710 purposes must be preserved for the future support, care,



2711 education, health, or welfare of the minor, and the balance, if  
2712 any, transferred to the minor when the minor becomes an adult or  
2713 otherwise is emancipated.

2714 (4) Contributions to an ABLE account, and the provisions for  
2715 permissible disbursements from such account, are governed by 26  
2716 U.S.C. Section 529A and the terms of the applicable ABLE plan.  
2717 The amount of annual contributions is subject to 26 U.S.C. Section  
2718 2503(b).

2719 **SECTION 2.** Section 9-1-49, Mississippi Code of 1972, is  
2720 amended as follows:

2721 9-1-49. (1) The clerk of the court shall prepare and  
2722 forward to the Department of Public Safety the information  
2723 described by subsection (2) of this section not later than the  
2724 thirtieth day after the date the court:

2725 (a) Judicially determines that a person is a person  
2726 with mental illness or person with an intellectual disability  
2727 under Title 41, Chapter 21, Mississippi Code of 1972, whether  
2728 ordered for inpatient treatment, outpatient treatment, day  
2729 treatment, night treatment or home health services treatment;

2730 (b) Acquits a person in a criminal case by reason of  
2731 insanity or on a ground of intellectual disability, without regard  
2732 to whether the person is ordered by a court to receive inpatient  
2733 treatment or residential care under Section 99-13-7;

2734 (c) Appoints a guardian or conservator under \* \* \*  
2735 Article 2, 3 or 4 of Section 1 of this act, based on the



2736 determination that the person is incapable of managing his own  
2737 person or estate \* \* \*;

2738 (d) Determines that a person is incompetent to stand  
2739 trial pursuant to Rule 9.06 of the Mississippi Rules of Circuit  
2740 and County Court Practice;

2741 (e) Finds under Section \* \* \* 318 or 430 of Section 1  
2742 of this act that a person has been restored to reason; or

2743 (f) Enters an order of relief from a firearms  
2744 disability under Section 97-37-5(4).

2745 (2) The clerk of the court shall prepare and forward the  
2746 following information:

2747 (a) The complete name, race, and sex of the person;

2748 (b) Any known identifying number of the person,  
2749 including social security number, driver's license number, or  
2750 state identification card number;

2751 (c) The person's date of birth; and

2752 (d) The federal prohibited-person information that is  
2753 the basis of the report required by this section.

2754 (3) If practicable, the clerk of the court shall forward to  
2755 the Department of Public Safety the information described by  
2756 subsection (2) of this section in an electronic format prescribed  
2757 by the department.

2758 (4) If an order previously reported to the department under  
2759 subsection (1) of this section is reversed by order of any court,  
2760 the clerk shall notify the department of the reversal not later



2761 than thirty (30) days after the clerk receives the court order or  
2762 the mandate from the appellate court.

2763 (5) The duty of a clerk to prepare and forward information  
2764 under this section is not affected by:

2765 (a) Any subsequent appeal of the court order;

2766 (b) Any subsequent modification of the court order; or

2767 (c) The expiration of the court order.

2768 **SECTION 3.** Section 43-47-29, Mississippi Code of 1972, is  
2769 amended as follows:

2770 43-47-29. In addition to the powers granted under the  
2771 provisions of this chapter, the department is authorized to  
2772 petition the court under the provisions of Section \* \* \* 401 or  
2773 402 of Section 1 of this act for appointment of a conservator for  
2774 any vulnerable person.

2775 **SECTION 4.** Section 45-9-103, Mississippi Code of 1972, is  
2776 amended as follows:

2777 45-9-103. (1) In this section, "federal prohibited-person  
2778 information" means information that identifies an individual as:

2779 (a) A person who has been judicially determined by a  
2780 court as a person with mental illness or person with an

2781 intellectual disability under Title 41, Chapter 21, Mississippi  
2782 Code of 1972, whether ordered for inpatient treatment, outpatient  
2783 treatment, day treatment, night treatment or home health services  
2784 treatment;





2785 (b) A person acquitted in a criminal case by reason of  
2786 insanity or on a ground of intellectual disability, without regard  
2787 to whether the person is ordered by a court to receive inpatient  
2788 treatment or residential care under Section 99-13-7;

2789 (c) An adult individual for whom a court has appointed  
2790 a guardian or conservator under \* \* \* Article 2, 3 or 4 of Section  
2791 1 of this act based on the determination that the person is  
2792 incapable of managing his own person or estate \* \* \*; or

2793 (d) A person determined to be incompetent to stand  
2794 trial by a court pursuant to Rule 9.06 of the Mississippi Rules of  
2795 Circuit and County Court Practice.

2796 (2) The Department of Public Safety by rule shall establish  
2797 a procedure to provide federal prohibited-person information to  
2798 the Federal Bureau of Investigation for use with the National  
2799 Instant Criminal Background Check System. Except as otherwise  
2800 provided by state law, the department may disseminate federal  
2801 prohibited-person information under this subsection only to the  
2802 extent necessary to allow the Federal Bureau of Investigation to  
2803 collect and maintain a list of persons who are prohibited under  
2804 federal law from engaging in certain activities with respect to a  
2805 firearm.

2806 (3) The department shall grant access to a person's own  
2807 federal prohibited-person information to the person who is the  
2808 subject of the information.



2809 (4) Federal prohibited-person information maintained by the  
2810 department is confidential information for the use of the  
2811 department and, except as otherwise provided by this section and  
2812 other state law, is not a public record and may not be  
2813 disseminated by the department.

2814 (5) The department by rule shall establish a procedure to  
2815 correct department records and transmit those corrected records to  
2816 the Federal Bureau of Investigation when a person provides:

2817 (a) A copy of a judicial order or finding under  
2818 Section \* \* \* 318 or 430 of Section 1 of this act that a person  
2819 has been restored to reason;

2820 (b) Proof that the person has obtained notice of relief  
2821 from disabilities under 18 USC, Section 925; or

2822 (c) A copy of a judicial order of relief from a  
2823 firearms disability under Section 97-37-5(4).

2824 **SECTION 5.** Section 81-5-62, Mississippi Code of 1972, is  
2825 amended as follows:

2826 81-5-62. Accounts payable at death may be established under  
2827 the following conditions:

2828 (a) An account in a bank, including a national bank,  
2829 may be opened by any person or persons with directions to make  
2830 such an account payable on the death of the person or persons  
2831 opening such an account to the named beneficiary or beneficiaries.  
2832 When an account is so opened, the bank shall pay any monies to the  
2833 credit of the account from time to time to, or pursuant to the



2834 order of, the person or persons opening such an account during his  
2835 or their lifetime in the same manner as if the account were in the  
2836 sole name or names of such person or persons. The term "accounts"  
2837 or "account" as used in this section shall include, but not be  
2838 limited to, any form of deposit or account, such as a savings  
2839 account, checking account, time deposit, demand deposit or  
2840 certificate of deposit, whether negotiable, nonnegotiable or  
2841 otherwise.

2842 (b) If the named beneficiary or one (1) of the  
2843 beneficiaries so named is an individual beneficiary and the  
2844 individual beneficiary or beneficiaries survive the death of the  
2845 person opening such an account, and the individual beneficiary or  
2846 all of the individual beneficiaries so named are sixteen (16)  
2847 years of age or over at the death of the person opening such an  
2848 account, the bank shall pay the monies to the credit of the  
2849 account, less all setoffs and charges, to the named individual  
2850 beneficiary or beneficiaries or upon his or their order, as  
2851 hereinafter provided, and such payment by the bank shall be valid,  
2852 notwithstanding any lack of legal age of the named beneficiary or  
2853 beneficiaries; provided, however, where such an account is opened  
2854 or subsequently held by more than one (1) person, the death of one  
2855 (1) of such persons shall not terminate the account and the  
2856 account shall continue as to the surviving person or persons and  
2857 the named beneficiary or beneficiaries subject to the provisions  
2858 of paragraphs (c) through (j) of this section. For purposes of



2859 this section, the term "individual beneficiary" shall refer to a  
2860 living person who is the named beneficiary of a payable on death  
2861 account.

2862 (c) If the named individual beneficiary or all of the  
2863 individual beneficiaries so named survive the death of the person  
2864 or persons opening such an account and are under sixteen (16)  
2865 years of age at such time, the bank shall pay the monies to the  
2866 credit of the account, less all setoffs and charges:

2867 (i) When or after the named individual beneficiary  
2868 becomes sixteen (16) years of age, to the named beneficiary or  
2869 upon his order; or

2870 (ii) When more than one (1) individual beneficiary  
2871 is named, the bank shall pay to each individual beneficiary so  
2872 named his proportionate interest in such account as each severally  
2873 becomes sixteen (16) years of age; or

2874 (iii) To the legal guardian of the named  
2875 individual beneficiary, wherever appointed and qualified, or where  
2876 more than one (1) beneficiary is named, the bank shall pay such  
2877 individual beneficiary's proportionate interest in such account to  
2878 his legal guardian wherever and whenever appointed and qualified;  
2879 or

2880 (iv) \* \* \* If no guardian is appointed and  
2881 qualified, payment may be made in accordance with the provisions  
2882 of Section \* \* \* 209 or 431 of Section 1 of this act in situations  
2883 to which such section or sections are applicable.



2884 (d) Where the death of the person or persons opening  
2885 such an account terminates the account under the provisions of  
2886 paragraphs (b) and (c) of this section, and where one or more of  
2887 the named individual beneficiaries are under sixteen (16) years of  
2888 age and the remainder of the named individual beneficiaries are  
2889 sixteen (16) years of age or over, the bank shall pay the monies,  
2890 less all setoffs and charges, to:

2891 (i) The named individual beneficiaries sixteen  
2892 (16) years of age or over at the time of termination of such  
2893 account pursuant to paragraph (b) of this section; and

2894 (ii) The named individual beneficiaries under  
2895 sixteen (16) years of age at the time of termination of such  
2896 account pursuant to paragraph (c) of this section.

2897 (e) If the named beneficiary or one (1) of the  
2898 beneficiaries so named is a revocable trust, evidenced by a  
2899 written trust agreement, which trust is still in existence at the  
2900 death of the person opening such an account, the bank shall pay  
2901 the monies to the credit of the account, less all setoffs and  
2902 charges, to the trustee of the named revocable trust or upon his  
2903 or their order, as hereinafter provided, upon being presented an  
2904 affidavit by the trustee stating that the name of the trust, the  
2905 names of the current trustees, and that the trust is still in  
2906 existence at the time of presentment of the affidavit. Such  
2907 payment by the bank shall be valid, notwithstanding any lack of  
2908 actual authority by the trustee, and the bank shall be discharged



2909 and released to the same extent as if the bank had dealt with the  
2910 personal representative of the decedent. Such bank shall not be  
2911 required to see to the proper application of the monies or  
2912 evidence thereof or to inquire into the truth of any statement  
2913 presented in the affidavit by the trustee.

2914 (f) Where such account is opened or subsequently held  
2915 by more than one (1) person, the bank, in the absence of any  
2916 written instructions to the contrary which are consented to by the  
2917 bank, shall accept payments made to such account and may pay any  
2918 monies to the credit of such account from time to time to, or  
2919 pursuant to the order of, either or any of such persons during  
2920 their life or lives in the same manner as if the account were in  
2921 the sole name of either or any of such persons.

2922 (g) When a person or persons open an account in a bank  
2923 in the form set forth in paragraph (a) of this section, and makes  
2924 a payment or payments to such account or causes a payment or  
2925 payments to be made to such account, it shall be conclusively  
2926 presumed that such person or persons intend to vest in the named  
2927 beneficiary or beneficiaries a present beneficial interest in such  
2928 payment so made and in the monies to the credit of the account  
2929 from time to time, to the end that, if the named beneficiary or  
2930 beneficiaries survive the person or persons opening such an  
2931 account, all the right and title of the person or persons opening  
2932 such an account in and to the monies to the credit of the account  
2933 at the death of such person or persons, less all setoffs and



2934 charges, shall, at such death, vest solely and indefeasibly in the  
2935 named beneficiary or beneficiaries subject to the conditions and  
2936 limitations of paragraphs (b) through (j) of this section.

2937           (h) If the named individual beneficiary predeceases the  
2938 person opening such an account, or if the named beneficiary is a  
2939 revocable trust that is terminated, the present beneficial  
2940 interest presumed to be vested in the named beneficiary pursuant  
2941 to paragraph (g) of this section shall terminate at the death of  
2942 the named individual beneficiary or upon the termination of the  
2943 revocable trust named as a beneficiary. In such case, the  
2944 personal representatives of the named individual beneficiary, the  
2945 beneficiaries of the revocable trust, and all others claiming  
2946 through or under the named beneficiary, shall have no right in or  
2947 title to the monies to the credit of the account, and the bank  
2948 shall pay such monies, less all setoffs and charges, to the person  
2949 opening such an account or pursuant to his order in the same  
2950 manner as if the account were in the sole name of the person  
2951 opening such an account; provided, however, where such an account  
2952 names more than one (1) beneficiary, the death of one (1) of the  
2953 individual beneficiaries or the termination of a revocable trust  
2954 beneficiary so named shall not terminate the account and the  
2955 account shall continue as to the surviving beneficiary or  
2956 beneficiaries subject to the provisions of paragraphs (b) through  
2957 (j) of this section.



2958 (i) A bank which makes any payment pursuant to  
2959 paragraphs (b) through (h) of this section, prior to service upon  
2960 the bank of an order of court restraining such payment, shall, to  
2961 the extent of each payment so made, be released from all claims of  
2962 the person or persons opening such an account, the named  
2963 beneficiary or beneficiaries, their legal representatives, and all  
2964 others claiming through or under them.

2965 (j) When an account is opened in a form described in  
2966 paragraph (a) of this section, the right of the named beneficiary  
2967 or beneficiaries to be vested with sole and indefeasible title to  
2968 the monies to the credit of the account on the death of the person  
2969 or persons opening such an account shall not be denied, abridged  
2970 or in anyway affected because such right has not been created by a  
2971 writing executed in accordance with the law of this state  
2972 prescribing the requirements to effect a valid testamentary  
2973 disposition of property.

2974 **SECTION 6.** Section 81-12-145, Mississippi Code of 1972, is  
2975 amended as follows:

2976 81-12-145. Accounts payable at death may be established  
2977 under the following conditions:

2978 (a) An account in an association may be opened by any  
2979 person or persons with directions to make such an account payable  
2980 on the death of the person or persons opening such an account to  
2981 the named beneficiary or beneficiaries. When an account is so  
2982 opened, the association shall pay any monies to the credit of the





2983 account from time to time to, or pursuant to the order of the  
2984 person or persons opening such an account during his or their  
2985 lifetime in the same manner as if the account were in the sole  
2986 name or names of such person or persons.

2987 (b) If the named beneficiary or one (1) of the  
2988 beneficiaries so named survive the death of the person opening  
2989 such an account and the beneficiary or all of the beneficiaries so  
2990 named are sixteen (16) years of age or over at the death of the  
2991 person opening such an account, the association shall pay the  
2992 monies to the credit of the account, less all proper setoffs and  
2993 charges, to the named beneficiary or beneficiaries or upon his or  
2994 their order, as hereinafter provided, and such payment by the  
2995 association shall be valid, notwithstanding any lack of legal age  
2996 of the named beneficiary or beneficiaries; provided, however,  
2997 where such an account is opened or subsequently held by more than  
2998 one (1) person, the death of one (1) of such persons shall not  
2999 terminate the account and the account shall continue as to the  
3000 surviving person or persons and the named beneficiary or  
3001 beneficiaries subject to the provisions of subsections (c) through  
3002 (i) of this section.

3003 (c) If the named beneficiary or all of the  
3004 beneficiaries so named survive the death of the person or persons  
3005 opening such an account and are under sixteen (16) years of age at  
3006 such time, the association shall pay the monies to the credit of  
3007 the account, less all proper setoffs and charges:



3008 (i) When or after the named beneficiary becomes  
3009 sixteen (16) years of age, to the named beneficiary or upon his  
3010 order; or

3011 (ii) When more than one (1) beneficiary is named,  
3012 the association shall pay to each beneficiary so named his  
3013 proportionate interest in such account as each severally becomes  
3014 sixteen (16) years of age; or

3015 (iii) To the legal guardian of the named  
3016 beneficiary, wherever appointed and qualified, or where more than  
3017 one (1) beneficiary is named, the association shall pay such  
3018 beneficiary's proportionate interest in such account to his legal  
3019 guardian wherever and whenever appointed and qualified; or

3020 (iv) \* \* \* If no guardian is appointed and  
3021 qualified, payment may be made in accordance with the provisions  
3022 of Section \* \* \* 209 or 431 of Section 1 of this act in situations  
3023 to which such section or sections are applicable.

3024 (d) Where the death of the person or persons opening  
3025 such an account terminates the account under the provisions  
3026 of \* \* \* paragraphs (b) and (c) of this section and where one or  
3027 more of the named beneficiaries are under sixteen (16) years of  
3028 age and the remainder of the named beneficiaries are sixteen (16)  
3029 years of age or over, the association shall pay the monies to the  
3030 credit of the trust, less all proper setoffs and charges, to:



3031 (i) The named beneficiaries sixteen (16) years of  
3032 age or over at the time of termination of said account pursuant  
3033 to \* \* \* paragraph (b) of this section, and

3034 (ii) The named beneficiaries under sixteen (16)  
3035 years of age at the time of termination of said account pursuant  
3036 to \* \* \* paragraph (c) of this section.

3037 (e) Where such account is opened or subsequently held  
3038 by more than one (1) person, the association, in the absence of  
3039 any written instructions to the contrary, consented to by the  
3040 association, shall accept payments made to such account and may  
3041 pay any monies to the credit of such account from time to time to,  
3042 or pursuant to the order of, either or any of said persons during  
3043 their life or lives in the same manner as if the account were in  
3044 the sole name of either or any of such persons.

3045 (f) When a person or persons opens an account in an  
3046 association, in the form set forth in \* \* \* paragraph (a) of this  
3047 section, and makes a payment or payments to such account, or  
3048 causes a payment or payments to be made to such account, such  
3049 person or persons shall be conclusively presumed to intend to vest  
3050 in the named beneficiary or beneficiaries a present beneficial  
3051 interest in such payment so made, and in the monies to the credit  
3052 of the account from time to time, to the end that, if the named  
3053 beneficiary or beneficiaries survive the person or persons opening  
3054 such an account, all the right and title of the person or persons  
3055 opening such an account in and to the monies to the credit of the



3056 account at the death of such person or persons, less all proper  
3057 setoffs and charges, shall, at such death, vest solely and  
3058 indefeasibly in the named beneficiary or beneficiaries subject to  
3059 the conditions and limitations of \* \* \* paragraphs (c) through (i)  
3060 of this section.

3061 (g) If the named beneficiary predeceases the person  
3062 opening such an account, the present beneficial interest presumed  
3063 to be vested in the named beneficiary pursuant to \* \* \* paragraph  
3064 (f) of this section shall terminate at the death of the named  
3065 beneficiary. In such case, the personal representatives of the  
3066 named beneficiary, and all others claiming through or under the  
3067 named beneficiary, shall have no right in or title to the monies  
3068 to the credit of the account, and the association shall pay such  
3069 monies, less all proper setoffs and charges, to the person opening  
3070 such an account, or pursuant to his order, in the same manner as  
3071 if the account were in the sole name of the person opening such an  
3072 account; provided, however, where such an account names more than  
3073 one (1) beneficiary, the death of one (1) of the beneficiaries so  
3074 named shall not terminate the account and the account shall  
3075 continue as to the surviving beneficiary or beneficiaries subject  
3076 to the provisions of \* \* \* paragraphs (c) through (i) of this  
3077 section.

3078 (h) An association which makes any payment pursuant  
3079 to \* \* \* paragraphs (c) through (g) of this section, prior to  
3080 service upon the association or an order of court restraining such



3081 payment, shall, to the extent of each payment so made, be released  
3082 from all claims of the person or persons opening such an account,  
3083 the named beneficiary or beneficiaries, their legal  
3084 representatives, and all others claiming through or under them.

3085 (i) When an account is opened in a form described  
3086 in \* \* \* paragraph (a) of this section, the right of the named  
3087 beneficiary or beneficiaries to be vested with sole and  
3088 indefeasible title to the monies to the credit of the account on  
3089 the death of the person or persons opening such an account shall  
3090 not be denied, abridged or in anywise affected because such right  
3091 has not been created by a writing executed in accordance with the  
3092 law of this state prescribing the requirements to effect a valid  
3093 testamentary disposition of property.

3094 **SECTION 7.** Section 81-14-363, Mississippi Code of 1972, is  
3095 amended as follows:

3096 81-14-363. (1) An account in a savings bank may be opened  
3097 by any person or persons with directions to make such account  
3098 payable upon his or their death to the named beneficiary or  
3099 beneficiaries. When an account is so opened, the savings bank  
3100 shall pay any money to the person or persons opening such account  
3101 during his or their lifetime in the same manner as if the account  
3102 were in the sole name or names of such person or persons.

3103 (2) If the named beneficiary or one (1) of the named  
3104 beneficiaries survive the death of the person opening such an  
3105 account and the beneficiary or all of the beneficiaries so named



3106 are sixteen (16) years of age or over at the death of such person,  
3107 the savings bank shall pay the money to the credit of the account,  
3108 less all proper setoffs and charges, to the named beneficiary or  
3109 beneficiaries or upon his or their order, as hereinafter provided.  
3110 Such payment by the savings bank shall be valid, notwithstanding  
3111 any lack of legal age of the named beneficiary or beneficiaries.  
3112 However, where such an account is opened or subsequently held by  
3113 more than one (1) person, the death of one (1) of such persons  
3114 shall not terminate the account and the account shall continue as  
3115 to the surviving person or persons and the named beneficiary or  
3116 beneficiaries subject to the provisions of subsection (3).

3117 (3) If the named beneficiary or all of the named  
3118 beneficiaries survive the death of the person or persons opening  
3119 such an account and are under sixteen (16) years of age at such  
3120 time, the savings bank shall pay the money to the credit of the  
3121 account, less all proper setoffs and charges:

3122 (a) When or after the named beneficiary becomes sixteen  
3123 (16) years of age, to the named beneficiary or upon his order; or

3124 (b) When more than one (1) beneficiary is named, the  
3125 savings bank shall pay to each beneficiary so named his  
3126 proportionate interest in such account as each severally becomes  
3127 sixteen (16) years of age; or

3128 (c) To the legal guardian of the named beneficiary,  
3129 wherever appointed and qualified, or where more than one (1)  
3130 beneficiary is named, the savings bank shall pay such



3131 beneficiary's proportionate interest in such account to his legal  
3132 guardian wherever and whenever appointed and qualified; or

3133 (d) \* \* \* If no guardian is appointed and qualified,  
3134 payment may be made in accordance with the provisions of  
3135 Section \* \* \* 209 or 431 of Section 1 of this act in situations to  
3136 which such sections are applicable.

3137 (4) Where the death of the person or persons opening such an  
3138 account terminates the account under the provisions of subsections  
3139 (2) and (3) of this section and where one or more of the named  
3140 beneficiaries are under sixteen (16) years of age and the  
3141 remainder of the named beneficiaries are sixteen (16) years of age  
3142 or over, the savings bank shall pay the money to the credit of the  
3143 trust, less all proper setoffs and charges, to:

3144 (a) The named beneficiaries sixteen (16) years of age  
3145 or over at the time of termination of said account pursuant to  
3146 subsection (2) of this section; and

3147 (b) The named beneficiaries under sixteen (16) years of  
3148 age at the time of termination of said account pursuant to  
3149 subsection (3) of this section.

3150 (5) Where such account is opened or subsequently held by  
3151 more than one (1) person, the savings bank in the absence of any  
3152 written instructions to the contrary, consented to by the savings  
3153 bank, shall accept payments made to such account and may pay any  
3154 money to the credit of such account from time to time to, or  
3155 pursuant to the order of, either or any of such persons during



3156 their life or lives in the same manner as if the account were in  
3157 the sole name of either of such persons.

3158 (6) When a person or persons opens an account in a savings  
3159 bank in the form set forth in subsection (1) of this section, and  
3160 makes a payment or payments to such account, or causes a payment  
3161 or payments to be made to such account, such person or persons  
3162 shall be conclusively presumed to intend to vest in the named  
3163 beneficiary or beneficiaries a present beneficial interest in such  
3164 payments made, and in the money to the credit of the account from  
3165 time to time, to the end that, if the named beneficiary or  
3166 beneficiaries survive the person or persons opening such an  
3167 account, all the right and title of the person or persons opening  
3168 such an account in and to the money to the credit of the account  
3169 at the death of such person or persons, less all proper setoffs  
3170 and charges, shall at such death, vest solely and indefeasibly in  
3171 the named beneficiary or beneficiaries subject to the conditions  
3172 and limitations of subsection (3).

3173 (7) If the named beneficiary predeceases the person opening  
3174 such an account, the present beneficial interest presumed to be  
3175 vested in the named beneficiary pursuant to subsection (6) of this  
3176 section shall terminate at the death of the named beneficiary. In  
3177 such case, the personal representatives of the named beneficiary,  
3178 and all others claiming through or under the named beneficiary,  
3179 shall have no right in or title to the money to the credit of the  
3180 account, and the savings bank shall pay such money, less all





3181 proper setoffs and charges, to the person opening such an account,  
3182 or pursuant to his order, in the same manner as if the account  
3183 were in the sole name of the person opening such an account;  
3184 provided, however, where such an account names more than one (1)  
3185 beneficiary, the death of one (1) of the beneficiaries so named  
3186 shall not terminate the account and the account shall continue as  
3187 to the surviving beneficiary or beneficiaries subject to the  
3188 provisions of subsection (3) of this section.

3189 (8) A savings bank which makes any payment pursuant to  
3190 subsection (3) of this section, prior to service upon the savings  
3191 bank of an order of court restraining such payment shall, to the  
3192 extent of each payment so made, be released from all claims of the  
3193 person or persons opening such an account, the named beneficiary  
3194 or beneficiaries, their legal representatives, and all others  
3195 claiming through or under them.

3196 (9) When an account is opened in a form described in  
3197 subsection (1) of this section, the right of the named beneficiary  
3198 or beneficiaries to be vested with sole and indefeasible title to  
3199 the money to the credit of the account on the death of the person  
3200 or persons opening such an account shall not be denied, abridged  
3201 or in anyway affected because such right has not been created by a  
3202 writing executed in accordance with the law of this state  
3203 prescribing the requirements to effect a valid testamentary  
3204 disposition of property.



3205           **SECTION 8.** Section 91-8-103, Mississippi Code of 1972, is  
3206 amended as follows:

3207           91-8-103. In this chapter:

3208                   (1) "Action," with respect to an act of a trustee,  
3209 includes a failure to act.

3210                   (2) "Ascertainable standard" means a standard relating  
3211 to an individual's health, education, support, or maintenance  
3212 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the  
3213 Internal Revenue Code of 1986, as in effect on July 1, 2014, or as  
3214 later amended.

3215                   (3) "Beneficial interest" means a distribution interest  
3216 or a remainder interest; provided, however, a beneficial interest  
3217 specifically excludes a power of appointment or a power reserved  
3218 by a settlor.

3219                   (4) "Beneficiary" means a person that:

3220                           (A) Has a present or future beneficial interest in  
3221 a trust, vested or contingent; or

3222                           (B) In a capacity other than that of trustee,  
3223 holds a power of appointment over trust property.

3224                   (5) "Beneficiary surrogate" means a person, including a  
3225 trust protector or trust advisor, other than a trustee, designated  
3226 by the settlor in the trust instrument or in a writing delivered  
3227 to the trustee, or designated in a writing delivered to the  
3228 trustee by a trust protector or trust advisor with power under the  
3229 terms of the trust instrument to receive notices, information, and



3230 reports otherwise required to be provided to a beneficiary under  
3231 Section 91-8-813(a) and (b), or to represent a beneficiary under  
3232 Section 91-8-303(8).

3233 (6) "Charitable trust" means a trust, or portion of a  
3234 trust, created for a charitable purpose described in Section  
3235 91-8-405(a).

3236 (7) "Conservator" means a person appointed by the court  
3237 to administer the estate of a minor or adult individual \* \* \* as  
3238 defined in Section \* \* \* 102 of Section 1 of this act.

3239 (8) "Directed trust" means a trust where through the  
3240 terms of the trust, one or more persons are given the authority to  
3241 direct or consent to a fiduciary's actual or proposed investment  
3242 decision, distribution decision, or any other decision of the  
3243 fiduciary.

3244 (9) "Distribution interest" means:

3245 (A) An interest, other than a remainder interest,  
3246 held by an eligible distributee or permissible distributee under a  
3247 trust and may be a current distribution interest or a future  
3248 distribution interest;

3249 (B) A distribution interest is classified as  
3250 either a mandatory interest, a support interest or a discretionary  
3251 interest; and although not the exclusive means to create each such  
3252 respective distribution interest, absent clear and convincing  
3253 evidence to the contrary, use of the example language accompanying  
3254 the following definitions of each such respective distribution



3255 interest results in the indicated classification of distribution  
3256 interest:

3257 (i) A mandatory interest means a distribution  
3258 interest in which the timing of any distribution must occur within  
3259 one (1) year from the date the right to the distribution arises  
3260 and the trustee has no discretion in determining whether a  
3261 distribution shall be made or the amount of such distribution;  
3262 example distribution language indicating a mandatory interest  
3263 includes, but is not limited to:

3264 a. All income shall be distributed to a  
3265 named beneficiary; or

3266 b. One Hundred Thousand Dollars  
3267 (\$100,000.00) a year shall be distributed to a named beneficiary;

3268 (ii) A support interest means a distribution  
3269 interest that is not a mandatory interest but still contains  
3270 mandatory language such as "shall make distributions" and is  
3271 coupled with a standard capable of judicial interpretation;  
3272 example distribution language indicating a support interest  
3273 includes, but is not limited to:

3274 a. The trustee shall make distributions  
3275 for health, education, maintenance, and support;

3276 b. Notwithstanding the distribution  
3277 language used, if a trust instrument containing such distribution  
3278 language specifically provides that the trustee exercise  
3279 discretion in a reasonable manner with regard to a discretionary



3280 interest, then notwithstanding any other provision of this  
3281 subparagraph defining distribution interests, the distribution  
3282 interest shall be classified as a support interest;

3283 (iii) A discretionary interest means any  
3284 interest that is not a mandatory or a support interest and is any  
3285 distribution interest where a trustee has any discretion to make  
3286 or withhold a distribution; example distribution language  
3287 indicating a discretionary interest includes, but is not limited  
3288 to:

3289 a. The trustee may, in the trustee's  
3290 sole and absolute discretion, make distributions for health,  
3291 education, maintenance, and support;

3292 b. The trustee, in the trustee's sole  
3293 and absolute discretion, shall make distributions for health,  
3294 education, maintenance, and support;

3295 c. The trustee may make distributions  
3296 for health, education, maintenance, and support;

3297 d. The trustee shall make distributions  
3298 for health, education, maintenance, and support; however, the  
3299 trustee may exclude any of the beneficiaries or may make unequal  
3300 distributions among them; or

3301 e. The trustee may make distributions  
3302 for health, education, maintenance, support, comfort, and general  
3303 welfare;



3304 f. A discretionary interest may also be  
3305 evidenced by:

3306 1. Permissive distribution language  
3307 such as "may make distributions";

3308 2. Mandatory distribution language  
3309 that is negated by the discretionary distribution language  
3310 contained in the trust such as "the trustee shall make  
3311 distributions in the trustee's sole and absolute discretion";

3312 g. An interest that includes mandatory  
3313 distribution language such as "shall" but is subsequently  
3314 qualified by discretionary distribution language shall be  
3315 classified as a discretionary interest and not as a support or a  
3316 mandatory interest;

3317 (C) (i) To the extent a trust contains  
3318 distribution language indicating the existence of any combination  
3319 of a mandatory, support and discretionary interest, that combined  
3320 interest of the trust shall be divided and treated separately as  
3321 follows:

3322 a. The trust shall be a mandatory  
3323 interest only to the extent of the mandatory distribution  
3324 language;

3325 b. The trust shall be a support interest  
3326 only to the extent of such support distribution language; and

3327 c. The remaining trust property shall be  
3328 held as a discretionary interest;



3329                   (ii) For purposes of this subparagraph (C), a  
3330 support interest that includes mandatory distribution language  
3331 such as "shall" but is subsequently qualified by discretionary  
3332 distribution language, shall be classified as a discretionary  
3333 interest and not as a support interest.

3334                   (10) "Environmental law" means a federal, state, or  
3335 local law, rule, regulation, or ordinance relating to protection  
3336 of the environment.

3337                   (11) "Excluded fiduciary" means any trustee, trust  
3338 advisor, or trust protector to the extent that, under the terms of  
3339 a trust:

3340                   (A) The trustee, trust advisor, or trust protector  
3341 is excluded from exercising a power, or is relieved of a duty; and

3342                   (B) The power or duty is granted or reserved to  
3343 another person.

3344                   (12) "Fiduciary" means:

3345                   (A) A trustee, conservator, guardian, agent under  
3346 any agency agreement or other instrument, an executor, personal  
3347 representative or administrator of a decedent's estate, or any  
3348 other party, including a trust advisor or a trust protector, who  
3349 is acting in a fiduciary capacity for any person, trust, or  
3350 estate;

3351                   (B) For purposes of subparagraph (A), an agency  
3352 agreement includes, but is not limited to, any agreement under



3353 which any delegation is made, either pursuant to Section 91-8-807  
3354 or by anyone holding a power or duty pursuant to Article 12;

3355 (C) For purposes of the definition of fiduciary in  
3356 Section 91-8-103, fiduciary does not mean any person who is an  
3357 excluded fiduciary as such is defined in Section 91-8-103.

3358 (13) "Guardian" means a person appointed by the  
3359 court \* \* \* to make decisions regarding the support, care,  
3360 education, health, and welfare of a minor or adult individual as  
3361 defined in Section 102 of Section 1 of this act. The term does  
3362 not include a guardian ad litem.

3363 (14) "Interests of the beneficiaries" means the  
3364 beneficial interests provided in the terms of the trust.

3365 (15) "Internal Revenue Code" means the Internal Revenue  
3366 Code of 1986, as in effect on July 1, 2014, or as later amended.

3367 (16) "Jurisdiction," with respect to a geographic area,  
3368 includes a state or country.

3369 (17) "Person" means an individual, corporation,  
3370 business trust, estate, trust, partnership, limited liability  
3371 company, association, joint venture, government; governmental  
3372 subdivision, agency, or instrumentality; public corporation, or  
3373 any other legal or commercial entity.

3374 (18) "Power of appointment" means:

3375 (A) An inter vivos or testamentary power to direct  
3376 the disposition of trust property, other than a distribution  
3377 decision made by a trustee or other fiduciary to a beneficiary;





3378 (B) Powers of appointment are held by the person  
3379 to whom such power has been given, and not by a settlor in that  
3380 person's capacity as settlor.

3381 (19) "Power of withdrawal" means a presently  
3382 exercisable general power of appointment other than a power: (A)  
3383 exercisable by a trustee and limited by an ascertainable standard;  
3384 or (B) exercisable by another person only upon consent of the  
3385 trustee or a person holding an adverse interest.

3386 (20) "Property" means anything that may be the subject  
3387 of ownership, whether real or personal, legal or equitable, or any  
3388 interest therein.

3389 (21) "Qualified beneficiary" means a beneficiary who,  
3390 on the date the beneficiary's qualification is determined:

3391 (A) Is a distributee or permissible distributee of  
3392 trust income or principal;

3393 (B) Would be a distributee or permissible  
3394 distributee of trust income or principal if the interests of the  
3395 distributees described in subparagraph (A) terminated on that date  
3396 without causing the trust to terminate; or

3397 (C) Would be a distributee or permissible  
3398 distributee of trust income or principal if the trust terminated  
3399 on that date.

3400 (22) "Remainder interest" means an interest under which  
3401 a trust beneficiary will receive property held by a trust outright  
3402 at some time during the future.



3403 (23) "Reserved power" means a power held by a settlor.

3404 (24) "Revocable," as applied to a trust, means  
3405 revocable by the settlor without the consent of the trustee or a  
3406 person holding an adverse interest.

3407 (25) "Settlor" means a person, including a testator,  
3408 who creates, or contributes property to, a trust. If more than  
3409 one (1) person creates or contributes property to a trust, each  
3410 person is a settlor of the portion of the trust property  
3411 attributable to that person's contribution except to the extent  
3412 another person has the power to revoke or withdraw that portion.

3413 (26) "Spendthrift provision" means a term of a trust  
3414 which restrains both voluntary and involuntary transfer of a  
3415 beneficiary's interest.

3416 (27) "State" means a state of the United States, the  
3417 District of Columbia, Puerto Rico, the United States Virgin  
3418 Islands, or any territory or insular possession subject to the  
3419 jurisdiction of the United States. The term includes an Indian  
3420 tribe or band recognized by federal law or formally acknowledged  
3421 by a state.

3422 (28) "Successors in interest" means the beneficiaries  
3423 under the settlor's will, if the settlor has a will, or in the  
3424 absence of an effective will provision, the settlor's heirs at  
3425 law.

3426 (29) "Terms of a trust" means the manifestation of the  
3427 settlor's intent regarding a trust's provisions as expressed in



3428 the trust instrument or as may be established by other evidence  
3429 that would be admissible in a judicial proceeding.

3430 (30) "Trust advisor" means any person described in  
3431 Section 91-8-1201(a).

3432 (31) "Trust instrument" means an instrument executed by  
3433 the settlor that contains terms of the trust, including any  
3434 amendments thereto.

3435 (32) "Trustee" includes an original, additional, and  
3436 successor trustee, and a cotrustee.

3437 (33) "Trust protector" means any person described in  
3438 Section 91-8-1201(a).

3439 **SECTION 9.** Section 93-14-102, Mississippi Code of 1972, is  
3440 amended as follows:

3441 93-14-102. In this chapter:

3442 (1) "Adult" means an individual who has attained \* \* \*  
3443 twenty-one (21) years of age.

3444 (2) "Conservator" means a person appointed by the court  
3445 to administer the property of an adult, including a person  
3446 appointed under \* \* \* Article 4 of Section 1 of this act.

3447 (3) "Guardian" means a person appointed by the court to  
3448 make decisions regarding the person of an adult, including a  
3449 person appointed under \* \* \* Article 2 or 3 of Section 1 of this  
3450 act.

3451 (4) "Guardianship order" means an order appointing a  
3452 guardian.



3453           (5) "Guardianship proceeding" means a judicial  
3454 proceeding in which an order for the appointment of a guardian is  
3455 sought or has been issued.

3456           (6) "Incapacitated person" means an adult for whom a  
3457 guardian has been appointed.

3458           (7) "Party" means the respondent, petitioner, guardian,  
3459 conservator, or any other person allowed by the court to  
3460 participate in a guardianship or protective proceeding.

3461           (8) "Person," except in the term incapacitated person  
3462 or protected person, means an individual, corporation, business  
3463 trust, estate, trust, partnership, limited liability company,  
3464 association, joint venture, public corporation, government or  
3465 governmental subdivision, agency, or instrumentality, or any other  
3466 legal or commercial entity.

3467           (9) "Protected person" means an adult for whom a  
3468 protective order has been issued.

3469           (10) "Protective order" means an order appointing a  
3470 conservator or other order related to management of an adult's  
3471 property.

3472           (11) "Protective proceeding" means a judicial  
3473 proceeding in which a protective order is sought or has been  
3474 issued.

3475           (12) "Record" means information that is inscribed on a  
3476 tangible medium or that is stored in an electronic or other medium  
3477 and is retrievable in perceivable form.



3478           (13) "Respondent" means an adult for whom a protective  
3479 order or the appointment of a guardian is sought.

3480           (14) "State" means a state of the United States, the  
3481 District of Columbia, Puerto Rico, the United States Virgin  
3482 Islands, a federally recognized Indian tribe, or any territory or  
3483 insular possession subject to the jurisdiction of the United  
3484 States.

3485           **SECTION 10.** Section 93-14-302, Mississippi Code of 1972, is  
3486 amended as follows:

3487           93-14-302. (a) To confirm transfer of a guardianship or  
3488 conservatorship transferred to this state under provisions similar  
3489 to Section 93-14-301, the guardian or conservator must petition  
3490 the court in this state to accept the guardianship or  
3491 conservatorship. The petition must include a certified copy of  
3492 the other state's provisional order of transfer.

3493           (b) Notice of a petition under subsection (a) must be given  
3494 to those persons that would be entitled to notice if the petition  
3495 were a petition for the appointment of a guardian or conservator  
3496 or issuance of a protective order in both the transferring state  
3497 and this state. The notice must be given in the same manner as  
3498 notice is required to be given in this state.

3499           (c) On the court's own motion or on request of the guardian  
3500 or conservator, the incapacitated or protected person, or other  
3501 person required to be notified of the proceeding, the court shall  
3502 hold a hearing on a petition filed pursuant to subsection (a).



3503 (d) The court shall issue an order provisionally granting a  
3504 petition filed under subsection (a) unless:

3505 (1) An objection is made and the objector establishes  
3506 that transfer of the proceeding would be contrary to the interests  
3507 of the incapacitated or protected person; or

3508 (2) The guardian or conservator is ineligible for  
3509 appointment in this state.

3510 (e) The court shall issue a final order accepting the  
3511 proceeding and appointing the guardian or conservator as guardian  
3512 or conservator in this state upon its receipt from the court from  
3513 which the proceeding is being transferred of a final order issued  
3514 under provisions similar to Section 93-14-301 transferring the  
3515 proceeding to this state.

3516 (f) Not later than ninety (90) days after issuance of a  
3517 final order accepting transfer of a guardianship or  
3518 conservatorship, the court shall determine whether the  
3519 guardianship or conservatorship needs to be modified to conform to  
3520 the law of this state.

3521 (g) In granting a petition under this section, the court  
3522 shall recognize a guardianship or conservatorship order from the  
3523 other state, including the determination of the incapacitated or  
3524 protected person's incapacity and the appointment of the guardian  
3525 or conservator.

3526 (h) The denial by a court of this state of a petition to  
3527 accept a guardianship or conservatorship transferred from another



3528 state does not affect the ability of the guardian or conservator  
3529 to seek appointment as guardian or conservator in this state  
3530 under \* \* \* Article 2, 3 or 4 of Section 1 of this act or under  
3531 Section 35-5-1 et seq., if the court has jurisdiction to make an  
3532 appointment other than by reason of the provisional order of  
3533 transfer.

3534       **SECTION 11.** Sections 93-13-3, 93-13-5, 93-13-7, 93-13-9,  
3535 93-13-11, 93-13-13, 93-13-15, 9-13-17, 93-13-19, 93-13-21,  
3536 93-13-23, 93-13-25, 93-13-27, 93-13-29, 93-13-31, 93-13-33,  
3537 93-13-35, 93-13-37, 93-13-38, 93-13-39, 93-13-41, 93-13-43,  
3538 93-13-45, 93-13-47, 93-13-49, 93-13-51, 93-13-53, 93-13-55,  
3539 93-13-57, 93-13-59, 93-13-61, 93-13-63, 93-13-65, 93-13-67,  
3540 93-13-69, 93-13-71, 93-13-73, 93-13-75, 93-13-77 and 93-13-79,  
3541 Mississippi Code of 1972, dealing with wards generally, are  
3542 repealed.

3543       **SECTION 12.** Section 93-13-111, Mississippi Code of 1972,  
3544 dealing with wards in need of mental treatment, is repealed.

3545       **SECTION 13.** Sections 93-13-121, 93-13-123, 93-13-125,  
3546 93-13-127, 93-13-128, 93-13-129, 93-13-131, 93-13-133 and  
3547 93-13-135, Mississippi Code of 1972, dealing with the appointment  
3548 of guardians for incompetent adults, are repealed.

3549       **SECTION 14.** Section 93-13-151, Mississippi Code of 1972,  
3550 dealing with the procedure following restoration of reason, is  
3551 repealed.



3552           **SECTION 15.** Section 93-13-161, Mississippi Code of 1972,  
3553 dealing with the appointment of a guardian for the estate of a  
3554 person in the armed forces listed as missing, is repealed.

3555           **SECTION 16.** Sections 93-13-181, 93-13-183, 93-13-185 and  
3556 93-13-187, Mississippi Code of 1972, dealing with nonresident  
3557 guardians, is repealed.

3558           **SECTION 17.** Sections 93-13-211, 93-13-213, 93-13-215,  
3559 93-13-217 and 93-13-219, Mississippi Code of 1972, dealing with  
3560 small transactions performed without guardianship, are repealed.

3561           **SECTION 18.** Sections 93-13-251, 93-13-253, 93-13-255,  
3562 93-13-257, 93-13-259, 93-13-261, 93-13-263, 93-13-265 and  
3563 93-13-267, Mississippi Code of 1972, dealing with conservators,  
3564 are repealed.

3565           **SECTION 19.** Section 93-13-281, Mississippi Code of 1972,  
3566 dealing with the joinder of parties in suits involving wards, is  
3567 repealed.

3568           **SECTION 20.** The editor is directed to retitle Title 93,  
3569 Chapter 13, Mississippi Code of 1972, appropriately.

3570           **SECTION 21.** This act shall take effect and be in force from  
3571 and after January 1, 2020.

