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Chapter No. 554  
13/HR40/R530SG  
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***HOUSE BILL NO. 725***

Originated in House  Clerk

HOUSE BILL NO. 725

AN ACT TO AMEND SECTIONS 93-13-38, MISSISSIPPI CODE OF 1972, AND 93-13-67, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE BILL 2375, 2013 REGULAR SESSION, TO REVISE REQUIREMENTS REGARDING GUARDIANSHIPS OF THE PERSON; TO REVISE CERTAIN REQUIREMENTS WHEN NO ESTATE IS INVOLVED IN THE GUARDIANSHIP; TO REQUIRE COMPLIANCE WITH SUCH REQUIREMENTS WHEN ASSETS ARE OBTAINED; TO AMEND SECTION 93-13-77, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE BILL 2375, 2013 REGULAR SESSION, TO CONFORM; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 93-13-38, Mississippi Code of 1972, is amended as follows:

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

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

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

payable by such guardian unless first probated and registered, as required of claims against the estate of decedent.

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

(4) (a) On application of the guardian or any interested party, and after notice to all interested persons and to such other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of (i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest, (ii) the ward's heirs at law who are identifiable at the time of the order, (iii) devisees under the ward's last validly executed will, if there be such a

will, and (iv) a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.

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

(c) The court:

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

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

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

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

**SECTION 2.** Section 93-13-67, Mississippi Code of 1972, as amended by Senate Bill No. 2375, 2013 Regular Session, is amended as follows:

93-13-67. (1) Except as herein provided, and as provided in Section 93-13-7, or 93-13-37 and 93-13-38, every guardian shall, at least once in each year, and oftener if required, exhibit his account, showing the receipts of money on account of his ward, and showing the annual product of the estate under his management, and the sale or other disposition thereof, and showing also each item of his expenditure in the maintenance and education of his ward and in the preservation and management of his estate, supported by legal vouchers. In the event that the account shall be presented by a bank or trust company which is subject to the supervision of the Department of \* \* \* Finance and Administration of the State of Mississippi or of the comptroller of the currency of the United States and such account, or the petition for the approval of same, shall contain a statement under oath by an officer of said bank or trust company showing that the vouchers covering the disbursements in the account presented are on file with the bank or trust company, \* \* \* the bank or trust company shall not be required to file vouchers. \* \* \* The bank or trust company shall produce \* \* \* the vouchers for inspection of any interested party or his or her attorney at any time during legal banking hours at the office of \* \* \* the bank or trust company; \* \* \* the court on its own motion or on the motion of any interested party may

require that \* \* \* the vouchers be produced and inspected at any hearing of any objections to \* \* \* the annual account. \* \* \* The accounts shall be examined, approved, and allowed by the court in the same way that the accounts of executors and administrators are examined, approved, and allowed. Compliance with the duties required, in this section, of guardian shall be enforced by the same means and in the same manner as is provided in respect to the accounts of executors and administrators.

\* \* \* (a) However, when the funds and personal property of the ward do not exceed the sum or value of Three Thousand Dollars (\$3,000.00) and there is no prospect of further receipt to come into the hands of the guardian other than interest thereon, or in guardianships in which the only funds on hand or to be received by the guardian are funds paid or to be paid by the Department of \* \* \* Human Services for the benefit of the ward, the chancery court or chancellor in vacation, may, for good cause shown, in his discretion and upon being satisfied it is to the best interest and welfare of the ward, authorize the guardian to dispense with further such annual accounts, except such as may be a final account. Furthermore, the chancery court or chancellor in vacation may \* \* \* dispense with \* \* \* annual accounts \* \* \* if the ward's assets consist solely of funds on deposit at any banking corporation, building and loan association or savings and loan association in this state; have been so deposited under order of the court to remain until otherwise ordered; are fully insured;

and a certified copy of the order to deposit, properly receipted, furnished the depository. \* \* \* If the court, or chancellor in vacation, \* \* \* authorizes the discontinuance of \* \* \* annual accounts, the guardian may, without further order of the court, from time to time pay the court costs and bond premiums owing by \* \* \* the estate or him as \* \* \* guardian, and, as well, he may likewise pay \* \* \* emergency obligations as he may have been empowered and allowed to do by necessity except for this section; but, he shall not pay from guardianship funds \* \* \* any other sums without further order of such court or chancellor without having first obtained order of the court or chancellor to do so. \* \* \* If emergency expenditure \* \* \* is needed for the immediate and necessary welfare of the ward, \* \* \* it shall at once be reported to the court, or chancellor in vacation, for approval. Furthermore, the court on its own motion or on the motion of any interested party may require the resumption and continuance of annual accounts \* \* \*.

(b) At the time of any \* \* \* annual account, the court, or a judge thereof in vacation, in its discretion, may allow to the guardian a minimum commission of One Hundred Dollars (\$100.00) per annum for its services, anything in the statutes of this state to the contrary notwithstanding.

(2) If the ward was a minor and the guardianship terminates by any means upon the ward obtaining majority, if a final accounting is not made and the ward does not petition the court to

compel a final accounting on or before July 1, 2014, or the twenty-second birthday of the ward, whichever comes last, the court may close its file on the guardianship unless it appears to the court that the court should seek accounting on its own motion.

**SECTION 3.** Section 93-13-77, Mississippi Code of 1972, as amended by Senate Bill No. 2375, 2013 Regular Session, is amended as follows:

93-13-77. When the guardianship shall cease in any manner, except as provided in Section 93-13-37 or 93-13-67, the guardian shall make a final settlement of his guardianship \* \* \* by making out and presenting to the court, under oath, his final account, which shall contain a distinct statement of all the balances of his annual accounts, either as debits or credits, and also all other charges, expenditures, and amounts received, and not contained in any previous annual account. \* \* \* The final account shall remain on file for the inspection of the ward, and summons for him shall be issued, which shall notify him to appear on a day not less than one month after service thereof or completion of its publication, and show cause why the final account of the guardian should not be allowed and approved. In the event that the account shall be presented by a bank or trust company which is subject to the supervision of the \* \* \* Mississippi Department of Banking and Consumer Finance or of the comptroller of the currency of the United States and \* \* \* the account, or the petition for the approval of \* \* \* the account, shall contain a statement under

oath by an officer of \* \* \* the bank or trust company showing that the vouchers covering the disbursements in the account presented are on file with the \* \* \* bank or trust company, \* \* \* the bank or trust company shall not be required to file vouchers. \* \* \* The bank or trust company shall produce \* \* \* the vouchers for inspection of any interested party or his or her attorney at any time during legal banking hours at the office of \* \* \* the bank or trust company, and \* \* \* the court on its own motion, or on the motion of any interested party, may require that \* \* \* the vouchers be produced and inspected at the time of hearing of any objections that may be filed to any final account. \* \* \* The court shall examine the final account, and hear the evidence for and against it; and if the court \* \* \* is satisfied, after examination, that the account is just and true, shall make a final decree of approval, or may allow only so much of the account as is right; and in the decree it shall make an allowance to the guardian for his trouble, not exceeding ten \* \* \* percent (10%) on the value of the estate; and shall also decree that the property of the ward shall be delivered to him, if not already delivered, and that the guardian be discharged. \* \* \* In like manner, and under like restrictions, it shall be made the duty of an executor or administrator of a deceased guardian to make final settlement of their testator's or intestate's guardianship accounts in the chancery court in which the same may be pending; but any ward arriving at the age of twenty-one (21) years may petition the

chancery court in which the guardianship is pending to waive the final settlement required by this section and discharge the guardian and his sureties, which petition shall be verified by oath, and the court shall grant the same unless there be reason to suspect that the petition was procured by the guardian through fraud or undue influence over the ward, in which case the court shall require proof of the good faith thereof.

If a final accounting is not made and the ward does not petition the court to compel a final accounting on or before July 1, 2014, or the twenty-second birthday of the ward, whichever comes last, the court may close its file on the guardianship unless it appears to the court that the court should seek accounting on its own motion.

**SECTION 4.** This act shall take effect and be in force from and after July 2, 2013.

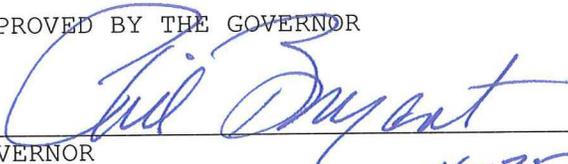
PASSED BY THE HOUSE OF REPRESENTATIVES  
April 2, 2013

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
April 2, 2013

  
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PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
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GOVERNOR

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