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Chapter No. 339
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AA / DR/JL

SENATE BILL NO. 2375

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2375

AN ACT TO AMEND SECTION 93-13-37, MISSISSIPPI CODE OF 1972, TO CREATE A CATEGORY OF SPECIAL GENERAL GUARDIAN TO OVERSEE THE PERSON AND AFFAIRS OF CERTAIN MINORS; TO AMEND SECTIONS 93-13-55, 93-13-57, 93-13-67 AND 93-13-77, MISSISSIPPI CODE OF 1972, TO CONFORM AND TO PROVIDE FOR WAIVER OF ANNUAL ACCOUNTINGS AND FINAL ACCOUNTINGS AND CLOSURE OF GUARDIANSHIP FILES IN CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 93-13-37, Mississippi Code of 1972, is amended as follows:

93-13-37. (1) If the minor ward * * * has a father or mother, the court, or chancellor in vacation, shall determine whether the expense of maintaining and educating him shall be borne by his guardian or not.

(2) (a) If the minor ward has a father or mother but no parent able to take responsibility for the minor, and the minor's assets do not include any real property, cash-on-hand of no more than Two Hundred Fifty Dollars ($250.00), and personal property worth no more than One Thousand Dollars ($1,000.00), and the court finds that it would be in the best interests of the minor, a

special general guardian who is related to the minor by blood or marriage may be appointed for the minor. An attorney is not required for this proceeding in chancery court, and the court shall waive annual or final accounting by the special general guardian.

(b) A special general guardian must comply with all relevant provisions of this chapter immediately upon there coming into his hands any realty, personalty or monies in excess of the limitations of this subsection (2).

SECTION 2. Section 93-13-55, Mississippi Code of 1972, is amended as follows:

93-13-55. (1) (a) Whenever a guardian shall receive for his ward, by inheritance, bequest or gift, any stocks, bonds or other securities or investments, in which the guardian is not authorized by law to invest the * * * monies of his ward, he shall apply to the court, or chancellor in vacation, for directions as to the disposition of * * * the stocks, bonds or other securities or investments. The court shall determine whether the guardian shall retain * * * the stocks, bonds or other securities or investments in the form in which they were received by the * * * guardian, or sell the same and reinvest the proceeds * * *. If the court or chancellor direct the guardian to retain * * * the stocks, bonds or other securities or investments, responsibility shall not attach thereafter to the guardian * * * as to the sufficiency of * * * the investment.

(b) Whenever a special general guardian appointed under Section 93-13-37 shall receive for his ward, by inheritance, bequest, gift or other acquisition, any property in which the guardian is not authorized by law to invest the monies of his ward, he shall apply to the court, or chancellor in vacation, for directions as to the disposition of the property. If the court or chancellor directs the guardian to retain the property, responsibility shall not attach thereafter to the guardian, but the court, or chancellor in vacation, may impose a duty of accounting if it is found to be in the best interest of the ward and may enforce court rules governing guardianships as the court, in its discretion, deems appropriate.

(2) Nothing in subsection (1) shall be construed to allow the investment of the money of the ward by the guardian in any manner other than is authorized by law.

SECTION 3. Section 93-13-57, Mississippi Code of 1972, is amended as follows:

93-13-57. (1) Whenever the guardian * * * has money of his ward not needed for current expenditures, or directed to be invested for the ward, he shall apply to the court, or chancellor in vacation, for direction as to the disposition he shall make of it. The court or chancellor shall determine whether he shall lend it at interest, and upon what security, or how he shall dispose of it. If the court or chancellor designate the person to whom the loan shall be made, or the security on which it shall be made, and

the loan to be so made, responsibility shall not attach thereafter to the guardian; but if the court or chancellor shall entrust him with discretion in the matter, he shall be bound for the exercise of sound judgment. The court or chancellor in its or his discretion may direct an investment in the bonds of the state or of any county, or municipality thereof, or of a levee board, or of the United States, or in shares of a building and loan association or a savings and loan association or in collateral trust notes registered and authenticated by trust departments of any approved state or national bank or in a common trust established by a bank or trust company, pursuant to the Uniform Common Trust Fund Law of Mississippi. Any guardian who fails to report to the court the fact that he has money of his ward not needed or allowed to be used for current expenditures, and to ask the order of the court as to the disposition of such money, may be chargeable with interest on the same at the rate of eight per centum (8%) per annum during the time of failure.

(2) Whenever a special general guardian appointed pursuant to Section 93-13-37 has money or other property of his ward not in excess of the amounts or values listed, he shall apply to the court, or chancellor in vacation, for direction as to the disposition he shall make of it.

SECTION 4. Section 93-13-67, Mississippi Code of 1972, is amended as follows:

93-13-67. (1) Except as herein provided, and as provided in Section 93-13-7 or 93-13-37, 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 bank supervision 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 5. Section 93-13-77, Mississippi Code of 1972, 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 per centum (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 6. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE SENATE
February 6, 2013

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 5, 2013

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

2:35 pm
3/14/13