

Senate Bill No. 34—Committee on Judiciary

CHAPTER.....

AN ACT relating to civil practice; revising the provisions relating to the appointment of temporary guardians; expanding the methods of investing the proceeds of a compromise from a legal dispute for a minor; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *1. A petitioner may request the court to appoint a temporary guardian for a ward who is an adult and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:*

*(a) Facts which show that the proposed ward:*

*(1) Faces a substantial and immediate risk of physical harm or needs immediate medical attention; and*

*(2) Lacks capacity to respond to the risk of harm or to obtain the necessary medical attention; and*

*(b) Facts which show that:*

*(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047;*

*(2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or*

*(3) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.*

*2. The court may appoint a temporary guardian to serve for 10 days if the court:*

*(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention;*

*(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1; and*

*(c) Finds that the petition required pursuant to subsection 1 is accompanied by:*

*(1) A certificate signed by a physician who is licensed to practice in this state which states that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; or*

*(2) The affidavit of the petitioner which explains the reasons why the certificate described in subparagraph (1) is not immediately obtainable.*

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after he discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Within 10 days after the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, the court may extend the temporary guardianship until a general or special guardian is appointed, but not for more than 30 days, if:

(a) The certificate required by subsection 2 has been filed and the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; or

(b) The certificate required by subsection 2 has not been filed and the court finds by clear and convincing evidence that:

(1) The proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention;

(2) Circumstances have prevented the petitioner or temporary guardian from obtaining the certificate required pursuant to subsection 2; and

(3) The extension of the temporary guardianship is necessary and in the best interests of the proposed ward.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

**Sec. 3. 1.** A petitioner may request the court to appoint a temporary guardian for a ward who is unable to respond to a substantial and immediate risk of financial loss. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Facts which show that the proposed ward:

- (1) *Faces a substantial and immediate risk of financial loss; and*
    - (2) *Lacks capacity to respond to the risk of loss; and*
  - (b) *Facts which show that:*
    - (1) *The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047;*
    - (2) *The proposed ward would be exposed to an immediate risk of financial loss if the petitioner were to provide notice to the persons entitled to notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or*
    - (3) *Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.*
2. *The court may appoint a temporary guardian to serve for 10 days if the court:*
  - (a) *Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of financial loss;*
  - (b) *Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1; and*
  - (c) *For a proposed ward who is an adult, finds that the petition required pursuant to subsection 1 is accompanied by:*
    - (1) *A certificate signed by a physician who is licensed to practice in this state which states that the proposed ward is unable to respond to a substantial and immediate risk of financial loss; or*
    - (2) *The affidavit of the petitioner which explains the reasons why the certificate described in subparagraph (1) is not immediately obtainable.*
3. *Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.*
4. *If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after he discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.*
5. *Within 10 days after the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, if the proposed ward is a minor and the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of financial loss, the court may extend the temporary guardianship until a general or special guardian is appointed, but not for more than 30 days. Except as*

*otherwise provided in subsection 7, if the proposed ward is an adult, the court may extend the temporary guardianship until a general or special guardian is appointed, but not for more than 30 days, if:*

*(a) The certificate required by subsection 2 has been filed and the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of financial loss; or*

*(b) The certificate required by subsection 2 has not been filed and the court finds by clear and convincing evidence that:*

*(1) The proposed ward is unable to respond to a substantial and immediate risk of financial loss;*

*(2) Circumstances have prevented the petitioner or temporary guardian from obtaining the certificate required pursuant to subsection 2; and*

*(3) The extension of the temporary guardianship is necessary and in the best interests of the proposed ward.*

*6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of financial loss.*

*7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:*

*(a) The provisions of NRS 159.0475 have been satisfied; or*

*(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.*

**Sec. 4.** NRS 159.047 is hereby amended to read as follows:

159.047 1. Except as otherwise provided in NRS 159.0475, 159.049 and 159.052, *and sections 2 and 3 of this act*, the court, upon the filing of a petition under NRS 159.044, shall direct the clerk to issue a citation setting forth a time and place for the hearing and directing the persons or institutions referred to in subsection 2 to appear and show cause why a guardian should not be appointed for the proposed ward.

2. A citation issued under subsection 1 must be served:

(a) If the proposed ward is an incompetent or a person of limited capacity:

(1) Upon the spouse and adult children of the incompetent or person of limited capacity who are known to exist, or, if there are none, upon any parent, brother or sister of the incompetent or person of limited capacity;

(2) Upon any person or officer of an institution having the care, custody or control of the incompetent or person of limited capacity; and

(3) Upon the incompetent or person of limited capacity.

(b) If the proposed ward is a minor:

(1) Upon the parents of the minor;

(2) Upon any person or officer of an institution having care, custody or control of the minor; and

(3) If the minor is 14 years of age or older, upon the minor.

**Sec. 5.** NRS 159.052 is hereby amended to read as follows:

159.052 1. A petitioner may request the court to appoint a temporary guardian ~~for~~ *for a ward who is a minor and who is unable to respond to a*

*substantial and immediate risk of physical harm or to a need for immediate medical attention.* To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Facts which show that the proposed ward:

(1) Faces a substantial and immediate risk of ~~financial loss or~~ physical harm or needs immediate medical attention; and

(2) Lacks capacity to respond to the risk of ~~loss or~~ harm or to obtain the necessary medical attention; and

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047;

(2) The proposed ward would be exposed to an immediate risk of ~~financial loss or~~ physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

2. ~~HH~~ *The court may appoint a temporary guardian to serve for 10 days if* the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of ~~financial loss or~~ physical harm or to a need for immediate medical attention; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1. ~~+~~

~~the court may appoint a temporary guardian to serve for 10 days. The court shall limit the temporary guardian's powers to those necessary to assist in the emergency.~~

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after he discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Within 10 days after the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection ~~6+~~ 7, if the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of ~~financial loss or~~ physical harm or to a need for immediate medical

attention, the court may extend the temporary guardianship until a general or special guardian is appointed, but not for more than 30 days. ~~[[The]~~

*6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the ~~temporary guardian's~~ powers of the temporary guardian to those necessary to ~~assist in the emergency.~~*

~~6.] respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.~~

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

**Sec. 6.** NRS 41.200 is hereby amended to read as follows:

41.200 1. If an unemancipated minor has a disputed claim for money against a third person, either parent, or if the parents of the minor are living separate and apart, then the custodial parent, or if no custody award has been made, the parent with whom the minor is living, or if a general guardian or guardian of the estate of the minor has been appointed, then that guardian, has the right to compromise the claim. Such a compromise is not effective until it is approved by the district court of the county where the minor resides, or if the minor is not a resident of the State of Nevada, then by the district court of the county where the claim was incurred, upon a verified petition in writing, regularly filed with the court.

2. The petition must set forth:

(a) The name, age and residence of the minor;

(b) The facts which bring the minor within the purview of this section, including:

(1) The circumstances which make it a disputed claim for money;

(2) The name of the third person against whom the claim is made;

and

(3) If the claim is the result of an accident, the date, place and facts of the accident;

(c) The names and residence of the parents or the legal guardian of the minor;

(d) The name and residence of the person or persons having physical custody or control of the minor;

(e) The name and residence of the petitioner and the relationship of the petitioner to the minor;

(f) The total amount of the proceeds of the proposed compromise and the apportionment of those proceeds, including the amount to be used for:

(1) Attorney's fees and whether the attorney's fees are fixed or contingent fees, and if the attorney's fees are contingent fees the percentage of the proceeds to be paid as attorney's fees;

(2) Medical expenses; and

(3) Other expenses,

and whether these fees and expenses are to be deducted before or after the calculation of any contingency fee;

(g) Whether the petitioner believes the acceptance of this compromise is in the best interest of the minor; and

(h) That the petitioner has been advised and understands that acceptance of the compromise will bar the minor from seeking further relief from the third person offering the compromise.

3. If the claim involves a personal injury suffered by the minor, the petitioner must submit all relevant medical and health care records to the court at the compromise hearing. The records must include documentation of:

(a) The injury, prognosis, treatment and progress of recovery of the minor; and

(b) The amount of medical expenses incurred to date, the nature and amount of medical expenses which have been paid and by whom, any amount owing for medical expenses and an estimate of the amount of medical expenses which may be incurred in the future.

4. If the court approves the compromise of the claim of the minor, the court must direct the money to be paid to the father, mother or guardian of the minor, with or without the filing of any bond, or it must require a general guardian or guardian ad litem to be appointed and the money to be paid to the guardian or guardian ad litem, with or without a bond, as the court, in its discretion, deems to be in the best interests of the minor.

5. Upon receiving the proceeds of the compromise, the parent or guardian to whom the proceeds of the compromise are ordered to be paid, shall establish a blocked ~~trust account~~ *financial investment for the benefit of the minor* with the proceeds of the compromise. *Money may be obtained from the blocked financial investment only pursuant to subsection 6.* Within 30 days after receiving the proceeds of the compromise, the parent or guardian shall file with the court proof that the blocked ~~trust account~~ *financial investment* has been established. If the balance ~~in the account~~ *of the investment* is more than \$10,000, the parent, ~~trustee or~~ guardian *or person in charge of managing the investment* shall annually file with the court a verified report detailing the activities of the ~~account~~ *investment* during the previous 12 months. If the balance ~~in the account~~ *of the investment* is \$10,000 or less, the court may order the parent, ~~trustee or~~ guardian *or person in charge of managing the investment* to file such periodic verified reports as the court deems appropriate. The court may hold a hearing on a verified report only if it deems a hearing necessary to receive an explanation of the activities of the ~~account~~ *investment*.

6. *The beneficiary of a block financial investment may obtain control of or money from the investment:*

*(a) By an order of the court which held the compromise hearing; or*

*(b) By certification of the court which held the compromise hearing that the beneficiary has reached the age of 18 years, at which time control of the investment must be transferred to the beneficiary or the investment must be closed and the money distributed to the beneficiary.*

7. The clerk of the district court shall not charge any fee for filing a petition for leave to compromise or for placing the petition upon the calendar to be heard by the court.

~~{7.}~~ 8. As used in this section, the term “blocked ~~{trust account}~~” means ~~an~~ *financial investment* means a savings account established in a depository institution in this state ~~{for the benefit of the minor with restrictions that the money cannot be withdrawn, except:~~  
— (a) By an order of the court which held the compromise hearing; or  
— (b) By certification of the court which held the compromise hearing that the beneficiary has reached the age of 18 years, at which time the account must be closed and the money distributed to the beneficiary.], a *certificate of deposit, a United States savings bond, a fixed or variable annuity contract, or another reliable investment that is approved by the court.*