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SECOND REPRINT

S.B. 34

SENATE BILL NO. 34—COMMITTEE ON JUDICIARY

PREFILED JANUARY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to appointment of temporary guardians and to investment for minors of their proceeds of compromises from legal disputes. (BDR 13-1070)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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:

- 1 **Section 1.** Chapter 159 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. 1. *A petitioner may request the court to appoint a***
4 *temporary guardian for a ward who is an adult and who is unable to*
5 *respond to a substantial and immediate risk of physical harm or to a need*
6 *for immediate medical attention. To support the request, the petitioner*
7 *must set forth in a petition and present to the court under oath:*
8 **(a) *Facts which show that the proposed ward:***
9 **(1) *Faces a substantial and immediate risk of physical harm or***
10 *needs immediate medical attention; and*
11 **(2) *Lacks capacity to respond to the risk of harm or to obtain the***
12 *necessary medical attention; and*
13 **(b) *Facts which show that:***
14 **(1) *The petitioner has tried in good faith to notify the persons***
15 *entitled to notice pursuant to NRS 159.047;*
16 **(2) *The proposed ward would be exposed to an immediate risk of***
17 *physical harm if the petitioner were to provide notice to the persons*
18 *entitled to notice pursuant to NRS 159.047 before the court determines*
19 *whether to appoint a temporary guardian; or*



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1 (3) Giving notice to the persons entitled to notice pursuant to NRS
2 159.047 is not feasible under the circumstances.
3 2. The court may appoint a temporary guardian to serve for 10 days
4 if the court:
5 (a) Finds reasonable cause to believe that the proposed ward is unable
6 to respond to a substantial and immediate risk of physical harm or to a
7 need for immediate medical attention;
8 (b) Is satisfied that the petitioner has tried in good faith to notify the
9 persons entitled to notice pursuant to NRS 159.047 or that giving notice
10 to those persons is not feasible under the circumstances, or determines
11 that such notice is not required pursuant to subparagraph (2) of
12 paragraph (b) of subsection 1; and
13 (c) Finds that the petition required pursuant to subsection 1 is
14 accompanied by:
15 (1) A certificate signed by a physician who is licensed to practice in
16 this state which states that the proposed ward is unable to respond to a
17 substantial and immediate risk of physical harm or to a need for
18 immediate medical attention; or
19 (2) The affidavit of the petitioner which explains the reasons why
20 the certificate described in subparagraph (1) is not immediately
21 obtainable.
22 3. Except as otherwise provided in subsection 4, after the
23 appointment of a temporary guardian, the petitioner shall attempt in
24 good faith to notify the persons entitled to notice pursuant to NRS
25 159.047. If the petitioner fails to make such an effort, the court may
26 terminate the temporary guardianship.
27 4. If, before the appointment of a temporary guardian, the court
28 determined that advance notice was not required pursuant to
29 subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall
30 notify the persons entitled to notice pursuant to NRS 159.047 without
31 undue delay, but not later than 48 hours after the appointment of the
32 temporary guardian or not later than 48 hours after he discovers the
33 existence, identity and location of the persons entitled to notice pursuant
34 to that section. If the petitioner fails to provide such notice, the court may
35 terminate the temporary guardianship.
36 5. Within 10 days after the appointment of a temporary guardian
37 pursuant to subsection 2, the court shall hold a hearing to determine the
38 need to extend the temporary guardianship. Except as otherwise provided
39 in subsection 7, the court may extend the temporary guardianship until a
40 general or special guardian is appointed, but not for more than 30 days,
41 if:
42 (a) The certificate required by subsection 2 has been filed and the
43 court finds by clear and convincing evidence that the proposed ward is
44 unable to respond to a substantial and immediate risk of physical harm
45 or to a need for immediate medical attention; or
46 (b) The certificate required by subsection 2 has not been filed and the
47 court finds by clear and convincing evidence that:



- 1 (1) The proposed ward is unable to respond to a substantial and
2 immediate risk of physical harm or to a need for immediate medical
3 attention;
4 (2) Circumstances have prevented the petitioner or temporary
5 guardian from obtaining the certificate required pursuant to subsection
6 2; and
7 (3) The extension of the temporary guardianship is necessary and
8 in the best interests of the proposed ward.
- 9 6. If the court appoints a temporary guardian or extends the
10 temporary guardianship pursuant to this section, the court shall limit the
11 powers of the temporary guardian to those necessary to respond to the
12 substantial and immediate risk of physical harm or to a need for
13 immediate medical attention.
- 14 7. The court may not extend a temporary guardianship pursuant to
15 subsection 5 beyond the initial period of 10 days unless the petitioner
16 demonstrates that:
- 17 (a) The provisions of NRS 159.0475 have been satisfied; or
18 (b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being
19 undertaken.
- 20 **Sec. 3. 1.** A petitioner may request the court to appoint a
21 temporary guardian for a ward who is unable to respond to a substantial
22 and immediate risk of financial loss. To support the request, the
23 petitioner must set forth in a petition and present to the court under oath:
- 24 (a) Facts which show that the proposed ward:
- 25 (1) Faces a substantial and immediate risk of financial loss; and
26 (2) Lacks capacity to respond to the risk of loss; and
27 (b) Facts which show that:
- 28 (1) The petitioner has tried in good faith to notify the persons
29 entitled to notice pursuant to NRS 159.047;
30 (2) The proposed ward would be exposed to an immediate risk of
31 financial loss if the petitioner were to provide notice to the persons
32 entitled to notice pursuant to NRS 159.047 before the court determines
33 whether to appoint a temporary guardian; or
34 (3) Giving notice to the persons entitled to notice pursuant to NRS
35 159.047 is not feasible under the circumstances.
- 36 2. The court may appoint a temporary guardian to serve for 10 days
37 if the court:
- 38 (a) Finds reasonable cause to believe that the proposed ward is unable
39 to respond to a substantial and immediate risk of financial loss;
40 (b) Is satisfied that the petitioner has tried in good faith to notify the
41 persons entitled to notice pursuant to NRS 159.047 or that giving notice
42 to those persons is not feasible under the circumstances, or determines
43 that such notice is not required pursuant to subparagraph (2) of
44 paragraph (b) of subsection 1; and
45 (c) For a proposed ward who is an adult, finds that the petition
46 required pursuant to subsection 1 is accompanied by:
- 47 (1) A certificate signed by a physician who is licensed to practice in
48 this state which states that the proposed ward is unable to respond to a
49 substantial and immediate risk of financial loss; or



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

4 3. Except as otherwise provided in subsection 4, after the
5 appointment of a temporary guardian, the petitioner shall attempt in
6 good faith to notify the persons entitled to notice pursuant to NRS
7 159.047. If the petitioner fails to make such an effort, the court may
8 terminate the temporary guardianship.

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

18 5. Within 10 days after the appointment of a temporary guardian
19 pursuant to subsection 2, the court shall hold a hearing to determine the
20 need to extend the temporary guardianship. Except as otherwise provided
21 in subsection 7, if the proposed ward is a minor and the court finds by
22 clear and convincing evidence that the proposed ward is unable to
23 respond to a substantial and immediate risk of financial loss, the court
24 may extend the temporary guardianship until a general or special
25 guardian is appointed, but not for more than 30 days. Except as
26 otherwise provided in subsection 7, if the proposed ward is an adult, the
27 court may extend the temporary guardianship until a general or special
28 guardian is appointed, but not for more than 30 days, if:

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

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

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

37 (2) Circumstances have prevented the petitioner or temporary
38 guardian from obtaining the certificate required pursuant to subsection
39 2; and

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

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

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

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



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

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

4 159.047 1. Except as otherwise provided in NRS 159.0475, 159.049
5 and 159.052, *and sections 2 and 3 of this act*, the court, upon the filing of
6 a petition under NRS 159.044, shall direct the clerk to issue a citation
7 setting forth a time and place for the hearing and directing the persons or
8 institutions referred to in subsection 2 to appear and show cause why a
9 guardian should not be appointed for the proposed ward.

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

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

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

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

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

19 (b) If the proposed ward is a minor:

20 (1) Upon the parents of the minor;

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

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

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

25 159.052 1. A petitioner may request the court to appoint a temporary
26 guardian ~~for a ward who is a minor and who is unable to respond to a~~
27 *substantial and immediate risk of physical harm or to a need for*
28 *immediate medical attention.* To support the request, the petitioner must
29 set forth in a petition and present to the court under oath:

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

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

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

35 (b) Facts which show that:

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

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

42 (3) Giving notice to the persons entitled to notice pursuant to NRS
43 159.047 is not feasible under the circumstances.

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

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



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

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

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

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

23 5. Within 10 days after the appointment of a temporary guardian
24 pursuant to subsection 2, the court shall hold a hearing to determine the
25 need to extend the temporary guardianship. Except as otherwise provided
26 in subsection ~~6,~~ 7, if the court finds by clear and convincing evidence that
27 the proposed ward is unable to respond to a substantial and immediate risk
28 of ~~financial loss or~~ physical harm or to a need for immediate medical
29 attention, the court may extend the temporary guardianship until a general
30 or special guardian is appointed, but not for more than 30 days. ~~The~~

31 *6. If the court appoints a temporary guardian or extends the*
32 *temporary guardianship pursuant to this section, the court shall limit the*
33 ~~temporary guardian's~~ powers of the *temporary guardian* to those
34 necessary to ~~assist in the emergency.~~
35 *—6. respond to the substantial and immediate risk of physical harm or*
36 *to a need for immediate medical attention.*

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

- 40 (a) The provisions of NRS 159.0475 have been satisfied; or
41 (b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being
42 undertaken.

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

44 41.200 1. If an unemancipated minor has a disputed claim for money
45 against a third person, either parent, or if the parents of the minor are living
46 separate and apart, then the custodial parent, or if no custody award has
47 been made, the parent with whom the minor is living, or if a general
48 guardian or guardian of the estate of the minor has been appointed, then
49 that guardian, has the right to compromise the claim. Such a compromise is



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1 not effective until it is approved by the district court of the county where
2 the minor resides, or if the minor is not a resident of the State of Nevada,
3 then by the district court of the county where the claim was incurred, upon
4 a verified petition in writing, regularly filed with the court.
5 2. The petition must set forth:
6 (a) The name, age and residence of the minor;
7 (b) The facts which bring the minor within the purview of this section,
8 including:
9 (1) The circumstances which make it a disputed claim for money;
10 (2) The name of the third person against whom the claim is made;
11 and
12 (3) If the claim is the result of an accident, the date, place and facts of
13 the accident;
14 (c) The names and residence of the parents or the legal guardian of the
15 minor;
16 (d) The name and residence of the person or persons having physical
17 custody or control of the minor;
18 (e) The name and residence of the petitioner and the relationship of the
19 petitioner to the minor;
20 (f) The total amount of the proceeds of the proposed compromise and
21 the apportionment of those proceeds, including the amount to be used for:
22 (1) Attorney's fees and whether the attorney's fees are fixed or
23 contingent fees, and if the attorney's fees are contingent fees the
24 percentage of the proceeds to be paid as attorney's fees;
25 (2) Medical expenses; and
26 (3) Other expenses,
27 and whether these fees and expenses are to be deducted before or after the
28 calculation of any contingency fee;
29 (g) Whether the petitioner believes the acceptance of this compromise is
30 in the best interest of the minor; and
31 (h) That the petitioner has been advised and understands that acceptance
32 of the compromise will bar the minor from seeking further relief from the
33 third person offering the compromise.
34 3. If the claim involves a personal injury suffered by the minor, the
35 petitioner must submit all relevant medical and health care records to the
36 court at the compromise hearing. The records must include documentation
37 of:
38 (a) The injury, prognosis, treatment and progress of recovery of the
39 minor; and
40 (b) The amount of medical expenses incurred to date, the nature and
41 amount of medical expenses which have been paid and by whom, any
42 amount owing for medical expenses and an estimate of the amount of
43 medical expenses which may be incurred in the future.
44 4. If the court approves the compromise of the claim of the minor, the
45 court must direct the money to be paid to the father, mother or guardian of
46 the minor, with or without the filing of any bond, or it must require a
47 general guardian or guardian ad litem to be appointed and the money to be
48 paid to the guardian or guardian ad litem, with or without a bond, as the
49 court, in its discretion, deems to be in the best interests of the minor.



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

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

21 (a) *By an order of the court which held the compromise hearing; or*
22 (b) *By certification of the court which held the compromise hearing*
23 *that the beneficiary has reached the age of 18 years, at which time*
24 *control of the investment must be transferred to the beneficiary or the*
25 *investment must be closed and the money distributed to the beneficiary.*

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

29 ~~{7-}~~ 8. As used in this section, the term “blocked ~~{trust-account}~~
30 ~~means-an}~~ *financial investment*” *means a savings* account established in a
31 depository institution in this state ~~{for-the-benefit-of-the-minor-with~~
32 ~~restrictions that the money cannot be withdrawn, except:~~
33 ~~—(a) By an order of the court which held the compromise hearing; or~~
34 ~~—(b) By certification of the court which held the compromise hearing that~~
35 ~~the beneficiary has reached the age of 18 years, at which time the account~~
36 ~~must be closed and the money distributed to the beneficiary-}~~ , *a certificate*
37 *of deposit, a United States savings bond, a fixed or variable annuity*
38 *contract, or another reliable investment that is approved by the court.*

