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OVERVIEW OF ASSEMBLY BILL 365
(As Introduced)

Assembly Bill 365 makes various changes regarding guardianships under Chapter 159 of *Nevada Revised Statutes* (NRS). This overview was prepared by the Research Division of the Legislative Counsel Bureau, at the request of the sponsor of the bill, to incorporate information regarding the changes that was provided by proponents of the measure.

SECTION-BY-SECTION
OVERVIEW OF NEW PROVISIONS

Sections 1 through 47 add new provisions to Chapter 159 of NRS. Proponents of Assembly Bill 365 explain that many of the new provisions under these sections are requested in response to a recent, unpublished opinion of the Nevada Supreme Court stating that a guardian's reliance on a section of the probate code was misguided. Therefore, the bill attempts "to make Chapter 159 as all-inclusive as possible" by adding provisions to the chapter which mirror many of the provisions of NRS dealing with wills and estates.

Section 1 is a technical section indicating that the new provisions set forth as Sections 2 through 47 of the bill will be added to Chapter 159 of NRS.

Section 2 – Definition of "Citation" – The new section defines the term "citation" for the purposes of Chapter 159 of NRS. A "citation" is a document issued by the clerk of the court, as authorized by statute or ordered by the court, requiring a person to appear, directing a person to act or conduct himself in a specified way, or notifying a person of a hearing. **Section 48** is a related section which amends NRS 159.013 to indicate that this new definition will apply to the provisions of Chapter 159 of NRS.

Additional Information: This section mirrors NRS 132.060, which defines "citation" for the provisions governing wills and estates of deceased persons under Title 12 of NRS.

Section 3 – Proceedings Pending in Another State – This new section authorizes a court to communicate with the court in another state when the court has reason to believe that guardianship proceedings may be pending in that state to determine the other state's involvement or interest, to promote cooperation and expand the exchange of information and other forms of assistance and to assure that proceedings take place in the state with which the proposed ward or ward has the closest connection. Because some states refer to conservatorships rather than guardianships, the term guardianship is defined in the section as including conservatorships.

Additional Information: Proponents of the measure indicate the section is necessary to permit "sharing of information between and among states or courts within a state to determine which court is the appropriate forum in which to determine the need for a guardianship." Proponents note that the procedure is similar proceedings under the Uniform Child Custody Jurisdiction Act. (See NRS 125A.060.)

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SUBMITTED BY: BARBARA BUCKLEY

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Section 4 – Appointment of Guardian ad Litem – This new section provides that on or after the date of the filing of a petition to appoint a guardian the court may appoint a person to represent the proposed ward or ward as a guardian ad litem. The guardian ad litem is entitled to reasonable compensation and must represent the proposed ward or ward as a guardian ad litem until relieved of the duty by court order. The court is required to set forth the duties of the guardian ad litem.

Additional Information: Proponents note that in some cases, “the proposed ward or ward may not be adequately represented by counsel * * * or counsel for the guardian or other interested persons. This statutory addition alleviates the court’s necessity to use case law and NRCP [*Nevada Rules of Civil Procedure*] 17 for justification of the need for appointment of a guardian ad litem in a guardianship proceeding. Additionally, a guardian ad litem is a real party at interest in a guardianship proceeding and may carry a cause of action independent of other parties to a case. An attorney for an incompetent does not have independent standing to pursue a cause of action.”

Section 5 – Appraisal or Valuation of Assets – This new section requires the guardian of an estate to cause an appraisal or valuation of any asset of a guardianship estate to be conducted by a disinterested appraiser, certified public accountant or expert in valuation. The appraisal or valuation must be filed with the court. Where the value of the asset can be determined with reasonable certainty, in lieu of an appraisal, the guardian may file a verified record of value.

Additional Information: Sections 5 and 6 are similar to provisions under NRS 144.020, 144.025 and 144.030, which govern the inventory and appraisement of wills and estates of deceased persons.

Section 6 – Conduct of Appraisal or Valuing and Compensation – This new section requires each appraiser, certified public accountant, or expert in valuation to certify that they will truthfully, honestly and impartially appraise or value the property according to the best of their knowledge and ability. The certification must be filed with the court. The appraisal or valuation must list separately each asset with a value over \$100.

Further, those conducting the appraisal or valuation are entitled to reasonable compensation. If one of these individuals sells any asset without full disclosure and approval by the court, he or she is guilty of a misdemeanor and the sale is void.

Additional Information: Sections 5 and 6 are similar to provisions under NRS 144.020, 144.025 and 144.030, which govern the inventory and appraisement of wills and estates of deceased persons.

Section 7 – Filing Petition When Conversion Alleged – This new section provides that if a guardian, interested person, ward or proposed ward petitions the court alleging that a person has unlawfully concealed or otherwise disposed of the ward’s money, goods, chattel, or effects, or has in his possession or knowledge documents regarding the ward’s right, title or

interest to any real or personal property or any claim or demand, the judge may cause the person to appear before the court to answer the petition.

Additional Information: Section 7 is similar to NRS 143.110 governing the powers and duties of personal representatives with regard to wills and estates of deceased persons under Title 12.

Section 8 – Order for Return of Asset and Holding Person in Contempt of Court After petition Alleging Conversion is Filed – This new section provides that if the court determines the person has committed an act alleged under Section 7, the court may order the person to return the asset, the value of the asset or provide information concerning the location of the asset to the guardian. The person may be held in contempt of court for refusing to appear or testify, or for failing to comply with a court order in the matter. If the person cited to appear to answer the petition is found not liable or responsible to the ward's estate, the court may order payment of attorney's fees and costs from either the estate of the ward or proposed ward or by the petitioner personally if the petition was unnecessary or unreasonable.

Additional Information: Section 8 is similar to NRS 143.120 governing the powers and duties of personal representatives with regard to wills and estates of deceased persons under Title 12.

Section 9 – Failure to Sell Property When Necessary – This new section provides that an interested party may petition the court for an order requiring a guardian to sell property of a ward's estate if the guardian neglects or refuses to sell real property when necessary or in the best interests of the ward. The court must hold a hearing on the petition, and notice to the guardian at least 10 days before the hearing is required.

Additional Information: Section 9 is similar to NRS 148.090 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

Section 10 – Sale of Property Subject to Mortgage or Other Lien and Disposition of Proceeds – This new section specifies the order for applying money from the sale of a ward's real property subject to a mortgage or other lien. The order is as follows, unless otherwise ordered by the court: (1) To pay the necessary expenses of the sale; (2) To satisfy the mortgage or other lien, including interest and any lawful costs and charges; and then (3) To the estate of the ward.

Additional Information: Section 10 is similar to NRS 148.130 and NRS 148.140 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 11 – Right of a Holder of a Lien to Purchase the Lien – This new section authorizes the holder of the mortgage or lien to purchase the real property. The receipt for the amount owed to the holder from the proceeds of the sale is a "payment pro tanto." ("Pro tanto" is defined in *Black's Law Dictionary* to mean "for as much as may be" or "as far as it goes").

Additional Information: Section 11 is similar to NRS 148.150 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 12 – Authorization for Sale of Like Property – This new section authorizes a guardian to sell both the equity of the estate in any real property subject to a mortgage or lien and the property subject to the mortgage or lien. If a claim has been filed upon the debt secured by the mortgage or lien, the court is prohibited from confirming the sale unless the holder of the claim files a document releasing the estate from all liability upon the claim.

Additional Information: Section 12 is similar to NRS 148.160 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

Section 13 – Contracts to find Purchaser of Real Property: Liability of Guardian; Limitation on Commission – This new section authorizes a guardian to enter into a contract with an agent or broker to find a purchaser for any real property of the ward's estate. Commissions must be authorized by the court by confirmation of the sale, paid from the proceeds of the sale, and limited to specified percentages. The contract for the sale is binding and enforceable against the estate upon confirmation of the sale by the court.

Additional Information: Section 13 is similar to NRS 148.110 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 14 - Division of Commission upon Confirmation of Highest Bid – This new section provides that when an offer to purchase real property is presented to the court for confirmation, other persons may submit higher bids to the court, and the court may confirm the highest bid. Upon confirmation, the commission must be divided in accordance with the contract.

Additional Information: Section 14 is similar to NRS 148.120 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 15 – Sale of Real Property Owned Jointly – This new section provides that real property which is jointly owned by a ward and another person may be sold to one or more joint owners if the guardian files a petition for confirmation by the court of the sale pursuant to NRS 159.134 (see Section 99 of the bill) and the court confirms the sale. The court shall confirm the sale only if the sale nets to the estate of the ward an amount not less than 90% of the fair market value of the portion to be sold and the estate of the ward is released from all liability for any mortgage or lien on the property.

Section 16 – Required Notice of Sale of Real Property – This new section requires a guardian to publish a notice of a sale before selling a ward's real property. Notice of the sale must be published in a newspaper in the county in which the property is located. If there is no newspaper published in that county, notice must be published in a newspaper of general

circulation in the county or in such newspaper as ordered by the court. This section does not apply to sales to joint owners under **Section 15**.

Notice of a public auction for the sale of real property must be published not less than 3 times before the date of the sale over period of a 14-days and 7 days apart. Notice of a private sale must be published 3 times before the date on which offers will be accepted, over the same time period. The court may order fewer publications and shorten the notice time for good cause shown, but must not shorten the time to less than 8 days.

The court may waive the publication requirement if the guardian is the sole devisee or heir of the estate or all devisees or heirs consent to the waiver in writing. In addition, publication for the sale is not required if the property to be sold is reasonably believed to have a value of \$5,000 or less. In lieu of publication, the guardian must publish notice of the sale in three of the most public places in the county in which the property is located for at least 14 days before the date of sale at public auction or the date on which offers will be accepted for a private sale.

Additional Information: **Section 16** is similar to NRS 148.220 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 17 – Hours for Public Auction and Postponement of Public Auction – This new section specifies the location, hours and date of a public auction. This section also provides that if a public action is postponed, it may be postponed for not more than 3 months after the date first set for auction and notice of the postponement must be given by a public declaration at the place first set for the sale on the date and time that was set for the sale.

Additional Information: **Section 17** is similar to NRS 148.230 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 18 – Private Sales of Real Property – This new section governs private sales of real property of a guardianship estate, other than a sale to a joint owner under **Section 15**. Such sales must not occur before the date stated in the notice or sooner than 14 days after the date of the first publication or posting of the notice, unless the time is shorted by the court. Further, the sale must not occur later than 1 year after the date stated in the notice. Offers made at private sale must be made in writing and may be delivered to the place designated in the notice or to the guardian at any time after the first publication or posting of the notice and before the date on which the sale is to occur.

Additional Information: **Section 18** is similar to NRS 148.240 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 19 – Confirmation of Private Sale of Real Property – This new section prohibits the court from confirming a private sale of real property unless the court is satisfied that the amount represents the property's fair market value and the real property has been appraised within 1 year before the date of the sale. If the property has not been appraised within the prior year, a new appraisal must be conducted pursuant to **Sections 5 and 6** of this bill before the sale or confirmation of the sale by the court. The court may waive the requirement of an

appraisal and allow the guardian to rely on the assessed value of the real property for purposes of taxation.

Additional Information: Section 19 is similar to NRS 148.260 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 20 – Hearing Concerning Confirmation of Sale: Considerations; Higher Offer; Continuance – This new section specifies that at the hearing to confirm the sale of real property, the court must consider whether the sale is necessary or in the best interests of the ward's estate. The court must also examine the return on the investment and evidence submitted in relation to the sale. This section specifies the conditions under which the court must confirm the sale. If these conditions are not satisfied, the court is prohibited from confirming the sale.

If the court does not confirm the sale, it may order a new sale, conduct a public auction in open court, or accept a written offer under specified conditions. If a new sale is ordered, notice must be given, as required by Section 16 of the bill and the sale must be conducted as if no previous sale had taken place.

If the court receives a higher offer or bid during the hearing to confirm the sale, it may continue the hearing if the court determines the person who made the original offer or bid was not notified of the hearing and that person may wish to increase his bid.

Additional Information: Section 20 is similar to NRS 148.270 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

Section 21 – Conveyance After Confirmation of Sale of Real Property – This new section provides that if a court confirms the sale of real property, the guardian is required to execute a conveyance of the property to the purchaser.

Additional Information: Section 21 is similar to NRS 148.280 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

Section 22 – Sale of Real Property Upon Credit – This new section provides that if a sale of real property is made upon credit, the guardian shall take the purchaser's note or notes for the unpaid portion of the sale with a mortgage on the property to secure payment of the notes.

Additional Information: Section 22 is similar to NRS 148.290 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 23 – Failure of Purchaser to Complete the Sale of Real Property – This new section provides that if the purchaser neglects or refuses to comply with the terms of the sale after its confirmation, the court may set aside the confirmation order and order the property to be resold. If the amount from the resale of the property is insufficient to pay for the expenses

related to the offer or bid and the expenses of the previous sale, the original purchaser is liable to the ward's estate for the deficiency.

Additional Information: Section 23 is similar to NRS 148.300 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

Section 24 – Fraudulent Sale of Real Property and Penalty – This new section provides that a guardian who fraudulently sells any of the ward's real property is liable for double the value of the property sold.

Additional Information: Section 24 is similar to NRS 148.310 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 25 – Periods of Limitation – This new section specifies that the periods of limitation prescribed in NRS 11.260¹ apply to all actions for the recovery of real property sold by a guardian and to set aside the sale of real property.

Additional Information: Section 25 is similar to NRS 148.320 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 26 – Personal Property – Perishable and Depreciating Property – This new section authorizes a guardian to sell perishable property and other personal property without notice and without confirmation of the court if the property will depreciate in value if not disposed of promptly, or if the property will incur loss or expense by being kept. If the guardian does not obtain confirmation of the sale by the court, the guardian is responsible for the actual value of the personal property.

Additional Information: Section 26 is similar to NRS 148.170 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

Section 27 – Personal Property – Sale of Securities – This new section authorizes a guardian to sell any security of the ward if the guardian petitions the court for confirmation of the sale, a hearing date is set, the guardian gives the notice required under Section 43 of the bill, and the court confirms the sale.

Additional Information: Section 27 is similar to NRS 148.180 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons under Title 12.

¹ NRS 11.260 - Action to recover estate sold by guardian. No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within 3 years next after the termination of the guardianship.

Section 28 – Sale of Other Personal Property – This new section authorizes the guardian to sell other personal property of the ward only after notice of the sale is published in newspaper published in the county in which the property is located. If a newspaper is not published in that county, notice must be published in a newspaper of general circulation in that county or in such other newspapers as ordered by the court.

Notice of a public auction must be published not less than 3 times before the date of the sale over period of a 14-days and 7 days apart. Notice of a private sale must be published 3 times before the date on which offers will be accepted, over the same time period. The court may order fewer publications and shorten the notice time for good cause shown, but must not shorten the time to less than 8 days. The content of the notice for both public sales and private sales is also specified.

Additional Information: Section 28 is similar to NRS 148.190 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 29 – Sale of Personal Property by Public or Private Sale – This new section authorizes the guardian to sell the ward's personal property by public sale at the ward's residence, the courthouse door, or any other location designated by the guardian. The property may be sold by public sale only if it is made available for inspection at the time of sale, unless the court orders otherwise. This section also authorizes personal property to be sold at a public or private sale for cash or upon credit.

Additional Information: Section 28 is similar to NRS 148.190 and 148.200 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 30 – Sale of Other Interests – This new section authorizes the sale of the following interests of the ward's estate in the same manner as other personal property: (1) An interest in a partnership; (2) An interest in personal property pledged to the ward; and (3) Choses in action. (*Black's Law Dictionary* defines a "chose in action" as "a right of bringing an action or right to recover a debt or money.")

Additional Information: Section 30 is similar to NRS 148.210 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Sections 31 through 35 – Sale of Mining Property – These new sections specify the circumstances under which a guardian may enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine which belong to the ward's estate. The court must file a petition with the court, the court must set the date of the hearing on the petition, and the petitioner must give the notice required under **Section 43** of the bill. If the required notice is given, the court must hear the petition and any objections filed or presented.

If the court is satisfied the agreement is to the advantage of the ward's estate, the court must order the guardian to enter into the agreement and may prescribe the agreement's terms and conditions. If the court orders the guardian to enter into the agreement, the court must also

order the guardian to provide an additional bond. The bond must be provided and approved by the court before the guardian is entitled to receive any proceeds from the agreement.

If the purchaser or option holder neglects or refuses to comply with the terms of the court-approved agreement, the guardian may petition the court to cancel the agreement. If the purchaser or option holder complies with the terms of the agreement and has made all payments under the agreement, the guardian shall petition the court for confirmation of the proceedings. Notice of the petition must be given to the purchaser or option holder and the court must hold a hearing on the petition. The court may order or deny confirmation of the proceedings and execution of the conveyances in the same manner and with the same effect as when the court orders or denies a confirmation of a sale of real property.

Additional Information: Sections 31 through 35 are similar to NRS 148.360 through 148.400 governing sales, conveyances, and exchanges with regard to wills and estates of deceased persons.

Section 36 – Standing to Petition for Removal of Guardian – This new section provides that the following persons may petition the court to have a guardian removed: the ward; the spouse of the ward; any relative who is within the second degree of consanguinity to the ward; or any interested person. The petition must state with particularity the reasons the court should remove the guardian and show cause for removal. If the court denies the petition for removal, the petitioner shall not file a subsequent petition unless a material change of circumstances warrants a subsequent petition. If the court finds that the petitioner did not file a petition for removal in good faith or in furtherance of the best interests of the ward, the court may bar the petitioner from petitioning the court for attorney's fees from the estate of the ward and impose sanctions on the petitioner that are sufficient to reimburse the estate of the ward for all or part of the expenses or any other pecuniary losses which are incurred by the estate of the ward and associated with the petition.

Additional Information: Proponents of the bill note that this section is "necessary to establish who has standing (the right) to bring a Petition for Removal."

Section 37 – Procedure when Petition for Removal of Guardian is Filed – This new section provides that if a petition for the removal of a guardian is filed, the court must issue and serve a citation on the guardian and all other interested persons. The citation must require the guardian to appear and show cause why the court should not remove the guardian.

If it appears the ward or estate may suffer loss or injury during the time required for service of the citation on the guardian, the court may:

- Suspend the guardian's powers under a 30-day temporary restraining order or an injunction;
- Compel the guardian to surrender the ward to a temporary guardian for not more than 30 days; and
- Compel the guardian to surrender the assets of the estate to a temporary guardian or to the public guardian until the date set for the hearing.

Additional Information: Proponents of the bill note that “this proposed addition to Chapter 159 has generally been handled by reference to NRS 159.113; however, [NRS] 159.113 is a general instruction section and requires that the petitioner creatively determine what ought to be done. This provision will provide clear direction that suspension of powers is possible.” (See **Section 93** for NRS 159.113, and the proposed changes under that section.)

Section 38 – Guardian Fails to Appear in Court on Petition for Removal – This new section authorizes the court to hold a guardian in contempt of court for failing to appear before the court if a petition to remove a guardian is deemed sufficient. The court may also require the guardian to appear at a date and time set by the court, issue a bench warrant for the guardian’s arrest and appearance, and find that the guardian caused harm to the ward or the ward’s estate and issue an order accordingly.

Section 39 – Resignation of Guardian – This new section authorizes the guardian of the person, of the estate, or of the person and the estate, to file a petition with the court tendering the guardian’s resignation. If such a petition is filed, the court must provide notice to any person entitled to such notice under NRS 159.047 (Citation for hearing to appear and show cause why a guardian should not be appointed). (See **Section 59** for NRS 159.047 and its proposed changes.)

Section 40 – Appointment of a Successor Guardian – This new section requires the court to appoint a successor guardian before approving a guardian’s resignation and discharging that guardian. If a ward has more than one guardian, the court may approve the resignation of one of the guardians if the remaining guardian or guardians are qualified to act alone.

Section 41 – Accounting of Estate Before Approving a Guardian’s Resignation – This new section provides that before the court may approve the resignation of a guardian of the estate, the guardian must submit an accounting of the estate. Failure to file such an accounting may result in sanctions. If an estate has more than one guardian, the court may approve the resignation of one of the guardians if the remaining guardian or guardians are qualified to act alone. The accounting requirement may be waived if the remaining guardian or guardians are required to file the annual accounting, if applicable, and are responsible for any discrepancies in the accounting.

Section 42 – Termination of a Temporary Guardianship – This new section governs the proceedings when a temporary guardianship is terminated.

- *If a petition for a general or special guardian has not been filed*, the temporary guardian must immediately turn over all of the ward’s property to the ward. However, if the temporary guardian is waiting for certification that the guardian has no further liability for taxes on the estate, the temporary guardian must seek the court’s approval to maintain possession of the ward’s property.

- *If a petition for general or special guardianship has been filed*, the temporary guardian may continue possession the ward's property and perform the duties of guardian for not more than 90 days after termination or until the court appoints another temporary, general, or special guardian.
- *If the death of a ward causes the termination of a temporary guardianship before the hearing on a general or special guardianship*, the temporary guardian may continue possessing the ward's property and perform the duties of the guardian for not more than 90 days or until the court appoints a personal representative of the estate. Possession may be maintained for longer than 90 days, with court approval, in certain circumstances. If no personal representative is appointed under Title 12 of NRS (Wills and Estates of Deceased Persons), the temporary guardian must pay all of the final expenses and debts to the extent possible using the assets in the guardian's possession.

Additional Information: Proponents of the bill note that "this proposed addition to Chapter 159 is necessary to provide a mechanism to close out a temporary guardianship, when no permanent guardianship is established. This will generally happen when the ward dies during the temporary guardianship, but after the guardian has garnered assets, taken actions, but cannot receive general letters of guardianship as a result of the ward's death. In order to allow the guardian to complete his or her duties, this section permits the court to extend the period of time to wind down the affairs."

Section 43 – Notice of Hearing on Petition in Guardianship Proceeding – This new section requires a petitioner in a guardianship proceeding to give notice of the time and place of the hearing on the petition to:

- Each interested person or his or her attorney;
- Any person entitled to notice under Chapter 159, or his or her attorney; and
- Any other person who has filed a request for notice in the guardianship proceedings.

Notice must be given at least 10 days before the date set for the hearing by certified, registered or ordinary first-class mail; by personal service; or in any manner ordered by the court. If the person's address or identity is not known and cannot be ascertained with reasonable diligence, notice must be given by publication in a newspaper or in any other manner ordered by the court. The court may require the notice requirement for good cause shown. A person entitled to the notice may also waive notice. Finally, the petitioner must file with the court proof of giving notice to each person entitled to the notice.

Additional Information: Section 43 is similar to the notice requirements under Chapter 155 of NRS, specifically NRS 155.010, which governs notices, orders, procedure, and appeals.

Section 44 – Changes in Notice Requirements – This new section authorizes the court, for good cause shown, to allow fewer publications to be made and to extend or shorten the time in which publications must be made.

Additional Information: Section 44 is similar to the notice requirements under Chapter 155 of NRS, specifically NRS 155.070, which governs notices, orders, procedure, and appeals relating to wills and estates of deceased persons.

Section 45 – Filing by Facsimile – This new section provides that if a petition, notice, objection, consent, waiver, or other paper may be filed, a facsimile of it may be filed if the original is filed within a reasonable time or at a time prescribed by the court.

Additional Information: Proponents note that “this proposed addition to Chapter 159 is helpful in allowing information to be reviewed by the court when the original is on its way.”

Section 46 – Clerk of Court May Give All Notices Required under Chapter 159 and May Issue Citations – This new section authorizes notices required under Chapter 159 to be given by the clerk of the court. In addition, if the use of a citation is authorized or required, the citation may also be issued by the clerk of the court on the request of a party or the party’s attorney without a court order, unless such an order is expressly required by statute.

Additional Information: Section 46 is similar to the requirements under Chapter 155 of NRS, specifically NRS 155.090, which governs notices, orders, procedure, and appeals relating to wills and estates of deceased persons.

Section 47 – Appeals to the Supreme Court from Certain Orders – This new section authorizes an appeal of certain orders to the Supreme Court within 30 days after their entry.

Additional Information: Section 47 is similar to the notice requirements under Chapter 155 of NRS, specifically NRS 155.190, which governs notices, orders, procedure, and appeals relating to wills and estates of deceased persons.

AMENDMENTS TO EXISTING LAW:
GENERAL PROVISIONS
(Section 48 through 53)

Section 48 – Technical Reference – This section amends NRS 159.013 to indicate that the term “citation” added to chapter 159 in Section 2 of the bill applies to the provisions of Chapter 159.

Section 49 – “Incompetent” Defined – This section amends NRS 159.019 to add that the term “incompetent” includes an incapacitated person.

Additional Information: Proponents to the bill note that “incompetent and incapacitated are often used interchangeably. The addition of this language allows the same meaning to be given to each term for the purposes of Chapter 159.”

Section 50 – “Institution” Renamed – This section amends NRS 159.021 to change the term defined in this section from “institution” to “care provider”.

Additional Information: Proponents note that “the change to care provider is more tempered and a less severe word.”

Section 51 – “Limited Capacity” Redefined – This section amends NRS 159.022 to make certain technical corrections to language.”

Additional Information: Proponents note, “the changes clean up this provision.”

Section 52 – “Minor” Redefined – This section amends NRS 159.023 to revise the definition of “minor” to include any person (1) less than 18 years of age; or (2) less than 19 years of age if the guardianship is continued until the person reaches the age of 19 years.

Additional Information: Proponents note that “the addition of language extending minority, for the purposes of NRS 159 only, beyond the age of 18 allows for non-parent guardians to continue to cover children with health insurance as well as continue to assist a child in getting proper care while still in high school. Additionally, a guardian may be entitled to child support from a natural parent, and the age extension solidifies a parent’s legal responsibility to pay support to a guardian for a child who is 18, but still in high school.”

Section 53 – Technical Section – Section 53 amends NRS 159.033 to provide that unless otherwise provided in this chapter, the provisions of Chapter 159 do not apply to guardians ad litem.

AMENDMENTS TO EXISTING LAW:
APPOINTMENT AND QUALIFICATIONS OF GUARDIANS
(Sections 54 through 78)

Section 54 – Appointment of Other Types of Guardians – This section amends NRS 159.035 to allow courts to appoint guardians of the person, of the estate, or of the person and the estate, for incompetents or minors who have previously been appointed by the court of another state. The language defines “guardianship” as including a conservator because some states refer to conservators rather than guardians. In addition, this section is amended to allow the court to appoint guardians ad litem to act in the best interests of the ward.

Additional Information: Proponents note that these changes permit the “court to grant an ‘ancillary’ (secondary) guardianship to another state’s ‘plenary’ (general) guardianship. For instance, a ward may live outside of Nevada and have a guardian and/or conservator appointed pursuant to that state’s law, but still need a guardianship in Nevada because of real property being located in Nevada (in rem jurisdiction). Likewise, a ward may be moved to Nevada, but still have an active guardianship in another jurisdiction. The need for an ‘overlapping’ guardianship may be warranted to be appropriate care. Most state[s] do not have comity or full faith and credit as it applies to guardianships.”

Proponents further note that the changes codify “a common practice of appointing a guardian ad litem within Chapter 159 to act in the best interests of a ward, if it would appear that all individuals involved may not be adequately recognizing or protecting the ward’s interests separate and apart from their own interests. Currently, a court must justify its ability to appoint a [guardian ad litem] by citing case law or the applicable NRCP.

Section 55 – Venue – This section amends NRS 159.037 to provide that if the proper venue for the appointment of a guardian is inconvenient, another venue may accept the proceeding.

Additional Information: Proponents note, “This additional section codifies a common practice in Nevada. For example, it is common for Nye County residents to come to Clark County for a guardianship due to the physical distance between Tonopah and Pahrump. Additionally, it is common for the medical needs to Nye County residents to be met in Clark County. Allowing a Nye County resident to come to the most convenient forum and one with significant contacts should be routinely permitted. The same view has been expressed by Washoe County judges and attorneys.”

Section 56 – Entitlement of Proceedings – This section amends NRS 159.043 to revise the caption required for all petitions and other documents filed in guardianship proceedings.

Additional Information: Proponents note, “The changes clean up this provision.”

Section 57 – Petition for the Appointment of a Guardian – This section amends NRS 159.044 as follows:

- Changes “concerned” person to “interested” person.
- Requires petition to provide identifying information for the proposed ward and the proposed guardian.

Additional Information: The proponents note these changes “are being requested so that the court and investigative authorities can identify and locate wards and guardians. Currently, there is little to no identifying information in a court’s files. Unfortunately, it has become common place for a guardian to use issued Letters of Guardianship for inappropriate purposes. Likewise, a guardian may leave the jurisdiction and for location purposes more than a name becomes necessary. The proposed information is intended to be kept in a confidential manner in the same fashion that this information is being kept from public disclosure in divorce and child support proceedings. Each jurisdiction was mandated by Chapter 125 [Dissolution of Marriage] to collect and safe guard identifying information. This proposed change will not impose unduly burdensome requirements on the courts as these safeguards are already statutorily mandated in other NRS chapters.”

- With regard to minors, this section requires information on whether there is a current order concerning custody and the state in which the order was issued. This section also requires information on whether the petitioner anticipates a guardian will be necessary when the proposed ward is no longer a minor.

Additional Information: Proponents note this change “requires the petitioner to provide the court with any known or available custody order affecting a minor. Requiring evidence of such an order assists the court in determining jurisdictional matters as well as notification requirements.”

- Requires additional information on felony convictions of the proposed guardian, if applicable.
- Requires recent documentation demonstrating the need for a guardianship, which may include, without limitation, documents from physicians, state agencies, or other qualified persons stating the need for a guardian.

Additional Information: Proponents note this change “requires that supporting documentation actually be filed in the court’s file as opposed to being reviewed the judge or commissioner. The necessity of providing documentation from a physician or authorized agency affords more due process protections to the proposed ward.”

- Requires description and probable value of property of the ward and any income to which the proposed ward “will be” entitled.

Additional Information: Proponents note this section “requests a disclosure of the possibility of future anticipated assets/income from public benefits, settlements or trusts. This mandatory disclosure will allow the court to be on notice of the need to insure sufficient security (bond, blocking) for future income. The current statute addresses only a disclosure of present assets or income.”

- Requires information on whether the proposed ward is a party to any pending criminal or civil litigation.
- Requires information on whether the guardianship is sought for the purpose of initiating litigation.

Additional Information: Proponents note these changes are requested to assist “the court in determining the possibility of future assets/income. Additionally, the court can insure that conflicting orders regarding who has the authority to pursue claims or cause of action are not issued. For instance, a court appointed guardian may represent to third parties that they have the power to negotiate claims on behalf of an incapacitated person while at the same time there is a different person appointed guardian ad litem in the pending civil action. A specifically appointed [guardian ad litem] would have the superior authority.”

- Requires information on whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters, or a written nomination of guardian and, if so, who the named agents are for each document.

Additional Information: Proponents note these changes are request to assist the court in determining whether the proposed ward had executed documents that contemplated the avoidance of guardianship proceedings and probate proceedings. Likewise, these documents may provide the Court with valuable information regarding who the proposed ward nominated to act on his or her behalf during a period of their life when they were more capable of expressing wishes regarding future incompetency."

Section 58 – Appointment of Investigators – This section amends NRS 159.046 to specifically allows the court to appoint more than one investigator and expands the reasons for which a court may appoint investigators. The section also specifies that the investigator is entitled to reasonable compensation.

Additional Information: The proponents note these "additions enlarge and more appropriately delineate the role, qualified persons and duties of a court appointed investigator. Additionally, there is a defined payment mechanism for compensation of the appointed investigator."

Section 59 – Issuance of the Citation – This section amends NRS 159.047 to revise the list of persons upon whom a citation concerning a hearing on the appointment of a guardian must be served. The requirements specify that the citation issued must be served upon:

- A proposed ward who is 14 years of age or older;
- All known relatives of the proposed ward to are 14 years of age or older and within the second degree of consanguinity or affinity;
- The parent or legal guardian of all known relatives of the proposed ward who are less than 14 years of age and within the second degree of consanguinity or affinity;
- If there are no known relatives within the second degree of consanguinity or affinity, upon the public guardian; and
- Any person or officer of a "care provider" having the care, custody, or control of the proposed ward.

Additional Information: Proponents note that, "[t]he substantive change to this statute requires notification to minor relatives. By way of an unfortunate example, the current statute permitted an adoption of a half-sibling by a guardian without notification to the ward's two minor half-siblings who had shared a relationship prior to a parental death that resulted in the children's separations. The adoption legally severed the familial relationship and the two minor half-siblings were denied all rights to contact and visitation by the operation of law (adoption severs legal ties and unless specific visitation is reserved prior to an adoption, there is no standing to request it after the fact)."

Section 60 – Manner of Serving Citation – This section amends NRS 159.0475 to authorize copies of the citation to be served by personal service and clarifies the circumstances under which the court may find that notice is sufficient.

Additional Information: Proponents note that, "Permissible service is sought to be expanded to personal service in accordance with NRCP 4 at least 10 days prior to the date

of hearing. Currently, personal service, which is a superior form of service, is not recognized as an appropriate method of notification. Section 5 was rewritten for clarity and to incorporate personal service."

Section 61 – Contents of the Citation – This section amends NRS 159.048 to clarify references to the proposed ward.

Additional Information: Proponents note that this section "cleans up language of [the] provision."

Section 62 – Appointment of Attorney for Adult Ward or Proposed Adult Ward and Attorney's Fees – This section amends NRS 159.0485 to specify the appointed attorney represents the ward until relieved of that duty by court order and that the attorney is entitled to reasonable compensation from the ward's estate.

Additional Information: Proponents note that "[t]he proposed change incorporates a payment mechanism as well as defines the length of service of the attorney."

Section 63 – Appointment of a Guardian without Issuance of a Citation – This section amends NRS 159.049 to clarify situations in which a guardian may be appointed without issuing a citation. The parent must have sole legal and physical custody of the proposed ward evidenced by a valid court order or a birth certificate.

Additional Information: Proponents note that "the proposed change clarifies an ambiguous situation ("lawful custody").

Sections 64 through 66 (Appointment of a Temporary Guardian for a Minor Ward Unable to Respond to Substantial and Immediate Risk of Physical Harm or to Need for Immediate Medical Attention [Section 64- NRS 159.052]; Appointment of a Temporary Guardian for an Adult Ward who is Unable to Respond to Substantial and Immediate Risk of Physical Harm or to Need for Immediate Medical Attention [Section 65-NRS 159.0523]; and Appointment of a Temporary Guardian for Ward who is Unable to Respond to Substantial and Immediate Risk of Financial Loss [Section 66-NRS 159.0525]:

- The changes to **Section 64** delete the application of situations in which the proposed minor ward "lacks capacity to respond to the risk of harm or to obtain the necessary medical attention."
- The remaining changes to **Sections 64 through 66** provide that if notice is given by publication, the temporary guardian may request a maximum 30-day extension during the period for publication. No more than two such extensions may be granted.

Additional Information: Proponents note that changes were "added to fill a hole in the temporary guardianship process. Currently, the life of a temporary guardianship is shorter than the mandated publication period of NRCP 4(e). To reconcile this problem, the additional section will permit a court to grant two extensions of an existing temporary

guardianship. Currently, if publication is necessary, a temporary guardian will have to reapply for a second "new" guardianship and go through the extension process of the second temporary guardianship. The current scenario is costly and not judicially economical."

Section 67 – Attendance of the Proposed Ward at a Hearing – This section amends NRS 159.0535 to clarify that a proposed ward in this state must attend the hearing for the appointment of a guardian unless a physician or other qualified person provides documentation stating the condition of the proposed ward and the reasons why the proposed ward is unable to appear in court.

Additional Information: Proponents note, "The proposed changes in section 1 clarify upon what condition a ward's appearance can be excused. The meaning of section 2 is not changed, the language was clarified."

Section 68 – References to the Court – This section amends NRS 159.054 to clarify the references to "it" as meaning "the court," and changes the reference to a "judgment" to "an order."

Additional Information: Proponents note, "The changes corrected terminology."

Section 69 – Burden of Proof that the Appointment of a Guardian is Necessary – This section amends NRS 159.055 to require clear and convincing evidence that the appointment of a guardian of the person, of the estate, or of the person and estate is necessary. This section also specifies that the order appointing a guardian must designate the relatives of the proposed ward upon whom notice must be served pursuant to NRS 159.047 (as modified in **Section 59** of the bill) and "any other interested person." Notice of the entry of the court order must be sent to these individuals.

Additional Information: Proponents note, "The required level of burden of proof was added to section 1. Section 2(d) and section 3 were expanded to include notification of legal guardians of minor children who are related to the ward or interested persons for the reasons described above under the proposed changes to NRS 159.047." (See **Section 59**.)

Section 70 – Guardian for Two or More Wards – This section amends NRS 159.057 to clarify the mandatory and discretionary authority of a guardian appointed for two or more wards.

Additional Information: Proponents note, "The changes clean up the language."

Section 71 – Qualifications of Guardian – This section revises the provisions concerning the qualifications of a guardian to allow a court to appoint a person as guardian who has been convicted of a felony if the court finds that it is in the best interests of the ward. In addition, the section specifies that a person is not qualified to serve as a guardian who has been suspended for misconduct or disbarred from the practice of accounting or any other licensed profession involving the management or sale of money, investments, securities, or real

property. The section also provides an additional qualification for nonresidents to be a guardian by stating that such an individual is not qualified who is not a foreign guardian of a nonresident ward under NRS 159.049 (See **Section 63** of the bill).

Finally, the changes to this section permit a nonresident of this state to qualify as a guardian under certain circumstances.

Additional Information: Proponents note that, " Section 3 was amended to allow the court to make a specific finding that a convicted felon may serve as a guardian. This section is particularly applicable in CPS [Child Protective Services] cases where a placement with a relative is appropriate and possible but for the felony conviction. In some cases a convicted felon can appropriately care for a ward that would otherwise be forced into foster care.

Section 4 was expanded to disqualify individuals as guardians when that professional has breached a fiduciary duty. Section 5 specifically permits a non-resident (foreign) guardian to petition to be guardian as long as they associate with an in-state resident."

Section 72 – Preferences in Appointing a Guardian; Considerations of the Court – This section amends NRS 159.061 to add language specifying that the appointment of a parent as a guardian of the person must not conflict with a valid order for custody of a minor. In addition, the section adds to the factors the court must consider in appointing the guardian to include the following:

- Any relationship by adoption of the proposed guardian to the proposed ward; and
- In considering preferences of appointment, the court must consider relatives of half blood equally with those of whole blood.
- Recommendations by a master of the court, in addition to the existing consideration of recommendations by a special master.

The section establishes following order of preference for relatives:

- Spouse.
- Adult child.
- Parent.
- Adult sibling.
- Grandparent or adult grandchild.
- Uncle, aunt, adult niece or adult nephew.

Finally, the bill provides that if the court finds there is no suitable relative to appoint as guardian or who is nominated in a written instrument, the court is required to appoint the public guardian, if there is one in the ward's county and if the ward qualifies for such an appointment under Chapter 253 of NRS (Public Administrators and Guardians). The court could also appoint a bondable private fiduciary if there is no public guardian available, the ward does not qualify for such an appointment, or the court finds the ward's interests will not be served by the appointment of a public guardian.

Additional Information: Proponents note, "The addition in section 1, addresses the need to look at valid custody orders when attempting to appoint a guardian of a minor. A fit and appropriate parent has priority and recognized legal rights to care for his or her child. When this addition is read in conjunction with NRS 159.041, there should be a UCCJA telephone conference with the other court if there is or appears to be a valid custody order.

The addition of (3)(d) through (f) defines a hierarchy of preferences in appointment if there are competing petitions for appointment."

Section 73 – Appointment of a Special Master to Identify Person Most Qualified and Suitable to Serve as Guardian – This section amends NRS 159.0615 to eliminate the reference to NRS 159.054 (Finding and order of court upon petition) and authorizes the court to appoint a master of the court to conduct a hearing to identify the persons most qualified and suitable to serve as guardian.

Additional Information: Proponents note the section "[a]dds language to include a court judicial officer, if one, in who can hear the case."

Section 74 – Court or Special Master Authorized to Allow Certain Persons to Testify at Hearing to Determine Person most Qualified and Suitable to Serve as Guardian – This section amends NRS 159.0617 to add a reference to the master of the court, pursuant to the changes made in Section 73, and specifies that "any other interested person" may be allowed to testify at any hearing to determine the person most qualified and suitable to serve as guardian.

Section 75 – Bond: General Requirements; Approval by Clerk; Liability of Sureties – This section amends NRS 159.065 to require the guardian to include the "full legal" name on documents in the proceeding. In addition, the section authorizes the guardian, in lieu of executing and filing a bond, to request that the court block access to certain assets.

Additional Information: Proponents note, "The addition of section 6 permits the court to accept alternate security in lieu of a bond. It is becoming increasingly difficult for individuals to qualify to be bonded. Additionally, numerous bonding companies are demanding that guardians who are to be bonded must have an attorney of record. This requirement flies in the face of affordable access to the court system and the strides that have been made to this end by the documented need and usefulness of Self-Help Centers in the two most populous counties in Nevada."

Section 76 – Taking Oath of Office; Filing Name and Address of Guardian – This section amends NRS 159.073 to require the guardian to file the "full legal" name on the appropriate documents.

Additional Information: Proponents note this section "[r]equires more identifying information regarding the guardian. Currently, the information required of a guardian is small. It is sometimes hard to identify and locate guardians."

Section 77 – Copy of Order of Appointment to Be Served Upon Ward – This section amends NRS 159.074 to specify a time frame of “not later than 5 days after the appointment” for service upon the ward of the order appointing the guardian. In addition, a notice of entry of the order must be filed with the court.

Additional Information: Proponents note, “The additional language puts a time limit on serving the notice of entry of order. The notice of entry of order is the critical event that commences the running of statutes of limitations in which to file certain motions for reconsideration or additional relief as well as appeals.”

Section 78 – Letters of Guardianship – This section amends NRS 159.075 to update the language currently in statute for the form of letters of guardianship.

Additional Information: Proponents note the “[c]hanges clean up language.”

AMENDMENTS TO EXISTING LAW:
POWERS AND DUTIES OF GUARDIANS
(Sections 79 through 92)

Section 79 – General Functions of a Guardian of the Person – This section clarifies that the reference to “he” is to the ward.

Additional Information: Proponents note the “[c]hanges clean up language.”

Section 80 – Supervisory Authority of a Special Guardian – This section amends NRS 159.0795 to specify that a special guardian has the powers set forth in the court’s order for the appointment, as well as any other powers given to him in an emergency needed to resolve the emergency or protect the ward from imminent harm.

Additional Information: Proponents note “The additional language attempts to clarify the powers of a special guardian by requiring a specific inclusion in the order of appointment.”

Section 81 – Court May Grant Additional Powers to a Special Guardian – This section amends NRS 159.0801 to require the special guardian of a person of limited capacity to apply to the court for instruction or approval before starting any act relating to that person. An exception is provided if the special guardian is responding to an emergency.

Additional Information: Proponents note “The additional language attempts to clarify the powers of a special guardian by requiring a specific inclusion in the order of appointment.”

Section 82 – Experimental Medical, Biomedical or Behavioral Treatment or Sterilization of a Ward – This section amends NRS 159.0805 to add “commitment of a ward to a mental health facility” to the list of treatments or procedures to which a guardian is prohibited from consenting. The exception to these prohibitions is modified to allow the guardian to consent to and commence any treatment, experiment, or commitment if the court grants such authority. (Existing law only allows the court to authorize the experimental treatment or participation.)

Additional Information: Proponents note, "There is confusion about the ability of a guardian to involuntarily commit a ward to a mental health facility. The additional language defines that there must be an order to allow the commitment. Likewise, the statute clarifies the need to seek authority prior to commencing any experimental medical treatment or sterilization on behalf of a ward. The ward must be afforded adequate protections with a hearing and, if necessary counsel, prior to possibly harmful or irreversible actions being taken."

Section 83 – Reports by a Guardian of the Person – This section amends NRS 159.081 to specify the written report the guardian of the person must file annually or as ordered by the court is "for review of the court." The section also specifies the court is not required to hold a hearing or enter an order regarding the report.

Additional Information: Proponents note, "The additional language requires the guardian to submit to the court (courtesy copy to chambers or other delivery to the attention of court staff as directed by local rule) to determine if a hearing on the contents or well-being is necessary. In many jurisdictions, the report may or may not be filed and the judge or other designated personnel may never see the contents of the report since it is not noticed for hearing."

Section 84 – Inventory, Supplemental Inventory and Appraisal of Property of Ward – This section amends NRS 159.085 to require temporary guardians of the estate to also file an inventory with the court no later than the date on which the temporary guardian files the required final accounting. In addition, the section requires the guardian to take an oath that the inventory contains a true statement of the ward's estate, money and just claims of the ward against the guardian.

The section also removes references to Chapter 144 (Inventory and Appraisal of Wills and Estates of Deceased Persons under Title 12) and clarifies that the court may order the ward's property appraised pursuant the new sections added to Chapter 159 in **Sections 6 and 7**.

Finally, the section authorizes the court to revoke letters of guardianship or enter a judgment for any loss or injury to the estate caused by the neglect of the guardian if the guardian neglects or refuses to file the inventory within the required period of time.

Additional Information: Proponents note, "The proposed additional language attempts to clarify and define the responsibility of a special guardian of an estate. Also, it defines the responsibility of a temporary guardian of an estate who is not appointed general over the estate. With these changes, a temporary guardian of the estate must file an inventory of the assets that came within his or her control as well as a final accounting of all income collected and expenses paid on behalf of the ward. The current statutory scheme does not define the responsibilities of a special or temporary guardian of an estate"

Section 85 – Recording Order of Appointment – This section amends NRS 159.087 to replace a reference to "order of appointment" with "letters of guardianship."

Additional Information: Proponents note the “[c]hanges clean up language.”

Section 86 – Possession and Title to Property of the Ward – This section amends NRS 159.089 to require a guardian of the estate to secure originals, when available, of documents executed or prepared by the ward or in which the ward has a vested interest. The documents specified include contracts, powers of attorney, estate planning documents, revocable or irrevocable trusts, and writings evidencing an interest any real or intangible property.

Additional Information: Proponents note, “The additional language imposes a duty on the guardian to collect originals or copies of all estate planning documents/asset ownership documents in order to have an appropriate understanding of the extent of a ward’s assets, how they are held and who may have authority over the management of the assets, whether current authority or future authority. This statute also provides the guardian with an enforcement mechanism to collect this information in the case of a recalcitrant holder of the information.”

Section 87 – Discovery of Debts or Property – This section amends NRS 159.091 to remove references to provisions under Chapter 143 of NRS (Powers and Duties of Personal Representatives involved in Wills and Estates of Deceased Persons under Title 12).

Additional Information: Proponents note the “[c]hanges clean up language.”

Section 88 – Collecting Obligations Due the Ward – This section amends NRS 159.093 to specify that the guardian of the estate may sue for and receive all debts and other choses in action due the ward only with the prior approval of the court.

Additional Information: Proponents note, “The additional language clarifies that a guardian may make demands for payment, but must request court permission prior to suing on claim.”

Section 89 – Representing the Ward in Legal Proceedings – This section amends NRS 159.095 to require the guardian of the estate to notify the court of the appointment of a guardian ad litem and of the outcome of an action, suit or proceeding to which the ward is a party.

Additional Information: Proponents note, “The additional language commands that a guardian of an estate notify the guardianship court of any action, suit or proceeding in which the ward is a party. By requiring the notification, the court will be on notice of the possibility of additional assets or income that may be made part of the ward’s estate. Likewise, the court may direct that a Special Needs Trust or Income Reduction Trust be imposed to protect benefits of the ward. On the other side of the scenario, the court needs to be on notice that there is a potential liability of the ward’s estate. In this case, the court may direct the guardian to pursue avenues to protect the ward’s assets prior to a final determination on the action, suit or proceeding. Finally, the court must be informed if the

guardian or a separately appointed guardian ad litem is making the decisions on behalf of the ward in any other action, suit or proceeding.”

Section 90 – Claims of the Guardian or Arising from the Contracts of the Guardian – This section amends NRS 159.105 to provide an exemption to the authorization for a guardian to pay from the guardianship estate his own claims or claims arising from contracts entered into by the guardian without having to comply with NRS 159.107 (Presentment and verification of claims)² and NRS 159.109 (Examination and allowance or rejection of claims by guardian), which is amended in **Section 91** of the bill. The new language in this section provides that claims for attorney’s fees may not be paid from the guardianship estate unless payment is in compliance with NRS 159.107 and NRS 159.109.

Additional Information: Proponents note, “The additional language prohibits a guardian from paying attorney’s fees without permission of the court. The fees may be reviewed and ratified at any time upon application to the court.”

Section 91 – Examination and Allowance or Rejection of Claims by the Guardian – This section amends NRS 159.109 to clarify references under existing law.

Additional Information: Proponents note the “[c]hanges clean up language.”

Section 92 – Recourse of Claimant When Claim is Rejected or Not Acted Upon – This section amends NRS 159.111 to clarify references under existing law.

Additional Information: Proponents note, “The added language attempts to clarify a confusing process of the presentation of claims against a ward’s estate that the guardian has rejected or refused to pay. The meaning of the statute has not been changed. Likewise, the procedure for presentation has not been changed.”

AMENDMENTS TO EXISTING LAW:
MANAGEMENT AND DISTRIBUTION OF THE ESTATE OF THE WARD
(Sections 93 through 103)

Section 93 – Petition to Secure Approval of Court – Existing law authorizes the guardian of the estate to petition the court for authorization for various action concerning the ward’s estate. This section amends NRS 159.113 to authorize the guardian to petition for authorization for certain actions involving wills and revocable or irrevocable trusts.

² **NRS 159.107 Presentment and verification of claims.** Except as provided in NRS 159.105, all claims against the ward, the guardianship estate or the guardian of the estate as such shall be presented to the guardian of the estate. Each such claim shall be in writing, shall describe the nature and the amount of the claim, if ascertainable, and shall be accompanied by the affidavit of the claimant, or someone on his behalf, who has personal knowledge of the fact. The affidavit shall state that within the knowledge of the affiant the amount claimed is justly due, no payments have been made thereon which are not credited and there is no counterclaim thereto, except as stated in the affidavit. If such claim is founded on a written instrument, the original or a copy thereof with all endorsements shall be attached to the claim. The original instrument shall be exhibited to the guardian or the court, upon demand, unless it is lost or destroyed, in which case the fact of its loss or destruction shall be stated in the claim. (Added to NRS by 1969, 421)

Additional Information: Proponents note the following with regard to the additions under subsections (l) through (s):

- "Section 1(l) allows a guardian to make or change a will. Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries. Appropriate medical evaluations and court hearings will be necessary to insure that the ward possesses the requisite level of capacity to formulate beneficiaries.
- Section 1(m) allows a guardian to change beneficiary designations on assets. Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries. Appropriate medical evaluations and court hearings will be necessary to insure that the ward possesses the requisite level of capacity to formulate beneficiaries.
- Section 1(n) allows a guardian, with the permission of the court, to take under or against a will if it is in the best interests of the ward.
- Section 1(o) attempts to permit the guardian of an estate to create a trust, with the permission of the court. Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries. Appropriate medical evaluations and court hearings will be necessary to insure that the ward possesses the requisite level of capacity to formulate beneficiaries. Otherwise, it would be suggested that intestate succession of beneficiaries be incorporated into the document.
- Section 1(p) permits a guardian, with the permission of the court, to deposit assets into an already established trust if it appears appropriate.
- Section 1 (q) allows the guardianship court to assume jurisdiction under a grantor trust (created by the ward) or a trust wherein the ward is the sole beneficiary. In counties where there is a family court which is separate from the general civil court, there have been issues regarding which court has appropriate jurisdiction in such situations. In an attempt to keep all related matters together for ease of administration, cost and consistency, a specific statute is warranted.
- Section 1(r) allows a guardian to revoke or modify a trust with sufficient cause unless the instrument specifically forbids it. Please note: this statute is needed in order to deal with Medicaid planning requirements. Often a house must be deeded out of a trust in order to preserve the asset for a non-institutionalized spouse under 42 U.S.C. 1396, et al.

NOTE [from Proponents]: *All or part of these proposed sections are in response to a case wherein a judicially determined exploiter who had an outstanding judgment against him or her ultimately inherited the remainder of the ward's estate because of documents that were not able to be revoked or invalidated due to the untimely death of the ward. The guardianship court was without jurisdiction upon the ward's death and the judicially determined exploiter was nominated as the executrix of the ward's estate. The current state of the statutes requires undue influence or exploitation to be proven before a will/trust or other planning document can be found invalid. Upon this finding, there will usually not be another document on which the court can rely; therefore, most assets will pass by intestate succession or escheat to the State. Additionally, Medicaid planning has warranted some of these needed changes.*

Section 94 – Notice of a Hearing of petition or Account – This section amends NRS 159.115 to specify the notice required for any petition authorizing the guardian of the estate to take certain actions with regard to the management of the estate under NRS 159.113 (**Section 93**) and deletes references to Chapter NRS 155 (Notices, Orders, Procedures and Appeals for Wills and Estates of Deceased Persons under Title 12).

The required notice must be provided at least 10 days before the hearing date by mail or by personal service. If the address or identity of the person is not known and cannot be ascertained, notice may be provided by publication in the appropriate newspaper at least 10 days before the hearing date. Finally, notice may be provided in any other manner ordered by the court, for good cause shown. Proof of giving notice must be made on or before the hearing date and filed in the guardianship proceeding.

This section also revises the list of persons to whom notice is required to include parents or legal guardians of minor wards less than 14 years of age and heirs who are related within the second degree of consanguinity or affinity. Further, an interested person entitled to notice is specifically authorized to waive the notice requirement, in writing.

Additional Information: Proponents note, "This proposed additional language is imported from NRS 155.00 to 155.090 (probate code) in an attempt to make Chapter 159 more inclusive in both law and procedure. The additional language will not require the reader to refer back to Chapter 155. The Nevada Supreme Court has recently stated in an unpublished opinion that a guardian's reliance on a section of the probate code was misguided. Therefore, it is imperative to make Chapter 159 as all-inclusive as possible."

Section 95 – Investment by a Guardian of the Estate – This section amends NRS 159.117 to specify that a guardian of the estate may maintain the ward's assets in the manner in which the ward had invested the assets before his incapacity upon approval of the court for the period authorized by the court or, without prior court approval, until a verified account is filed and approved by the court.

Additional Information: Proponents note, "The additional language in 4 allows the guardian to maintain an investment portfolio/asset management plan that was established by the ward prior to his or her incompetency. Without this provision, a guardian is forced to liquidate all portfolios or asset management plans that maintain assets or income in a manner not specifically permissible under the statute. NOTE: currently, only government backed or insured instruments are approved by statute. The changes permit a guardian to maintain the investment portfolio/asset management plan for a period approved by the court. If approval to maintain the portfolio/plan is not immediately sought, the guardian may maintain the assets in the form that pre-existed the guardianship until the accounting is approved at which time it is contemplated disclosure and discussion on the prudence of this portfolio/plan will occur."

Section 96 – Continuing the Business of the Ward – This section amends NRS 159.119 to expand the types of business the guardian of the estate may continue with prior court approval.

Additional Information: Proponents note the “[c]hanges clean up language and add appropriate terminology.”

Section 97 – Gifts from the Estate of the Ward; Expenditures for Relatives of the Ward – This section amends NRS 159.125 to authorize the guardian of the estate to provide for the care, maintenance, education or support of relatives related by adoption. Further, when seeking court approval to make any gifts, payments, or contributions, the guardian must include information in the petition concerning whether the guardian’s purpose is to make the ward eligible for Medicaid and whether making the gift, payment or contribution will cause the ward to become eligible for Medicaid.

Additional Information: Proponents note, “The additional language requires a disclosure by the guardian as to whether the gift is sought to result in a qualification for Medicaid eligibility. On the converse side, any gift must be evaluated to determine if it will result in any disqualification period for Medicaid eligibility.”

Section 98 – Property of the Ward Subject to Sale – This section amends NRS 159.132 to authorize the sale of a ward’s interest in a limited liability company as personal property, and provides that another member may be the purchaser.

Additional Information: Proponents note the “[c]hanges clean up language and add appropriate terminology.”

Section 99 – Manner of Selling Property of the Ward – This section removes references to Chapter 148 of NRS (Sales, Conveyances and Exchanges involving Wills and Estates of Deceased Persons under Title 12). The section requires reporting of all sales of real property of a ward to the court and requires confirmation by the court before title passes to the purchaser. The report and petition for confirmation must be filed within 30 days of the sale and the court must hold a hearing and provide the required notice. Interested parties may file written objections. Notice of the sale must be provided pursuant to the requirements of Sections 16, 17, and 18 of this bill.

Additional Information: Proponents note, “This proposed addition to Chapter 159 is imported from Chapter 148 (probate code), specifically 148.060 and 148.080 through 148.400, in an attempt to make Chapter 159 more inclusive in both law and procedure. Currently, the court and practitioners must look to various chapters of the probate code for guidance. The Nevada Supreme Court has recently stated, in an unpublished opinion, that a guardian’s reliance on a section of the probate code was misguided. Therefore, it is imperative to make Chapter 159 as all-inclusive as possible.”

Section 100 – Order Authorizing a Lease – This section amends NRS 159.161 to add that when a guardian petitions the court for approval of a lease, the petition must contain the parcel number assigned to the property and the physical address of the property.

Additional Information: Proponents note, "This proposed additional language to this section provides better detail of the property location."

Section 101 – Lease of Mining Claim or Mineral Rights; Option to Purchase – This section amends NRS 159.165 to revise the reference to the section controlling the notice requirements.

Additional Information: Proponents note the "[c]hanges clean up the language."

Section 102 – Advice, Instructions and Approval of Acts of Guardians – This section amends NRS 159.169 to authorize the guardian of the estate to petition the court for advice and instructions concerning exercising the right to take under a will, trust, or other devise for or on behalf of a ward.

Additional Information: Proponents note the "[c]hanges clean up language. Subsection 1(e)(2) logically follow the concept already codified in 1(e)(2)."

Section 103 – Transfer of Property of Ward Not Ademption – This section amends NRS 159.173 to add property held as a joint tenancy or in a trust to the provisions of the statute.

Additional Information: Proponents note, "This proposed addition to Chapter 159 allows the court to restore the Ward's asset planning and/or beneficiary designation. For instance, if stock is payable on death, but liquidated and the funds deposited into a bank account, upon the termination of the guardianship, the previously designated beneficiary can elect to take the proceeds in the bank account in lieu of the stock. The restoration negates ademption (the disposal of assets with a testamentary designation)."

REVISIONS TO EXISTING LAW:
ACCOUNTINGS
(Sections 104 through 107)

Section 104 – Time for Filing a Verified Account – This section amends NRS 159.177 to authorize the court to order the account be made and filed at different intervals upon a showing a good cause and with the appropriate protection of the ward's interests. Longer periods may also be authorized when a guardian is removed or when the ward dies.

Additional Information: Proponents note, "This proposed addition to Chapter 159 will expressly allow the Court discretion to determine that an accounting may be brought less frequently than annually. This will preserve the ward's assets, as the costs will decrease, especially when blocked accounts are utilized. Additionally, upon the termination of a guardianship, the guardian can be provided a longer period to file a final accounting."

Section 105 – Contents of An Account; Retention of Receipts or Vouchers for All Expenditures – This section amends NRS 159.179 to remove a reference to Chapter 150 of NRS (Compensation and Accounting for Wills and Estates of Deceased Persons under Title 12) and specify that the guardian is not required to file receipts or vouchers with the court unless so ordered. On the court's motion or on an ex parte motion by an interested person, the court

may order the production of the receipts and vouchers and examine or audit the documents. The section also specifies the circumstances in which the guardian must be allowed expenditures for receipts or vouchers that are lost or cannot be produced.

Additional Information: Section 105 mirrors the language of NRS 150.150, the statutory reference that is removed. Proponents note, "The changes explain when receipts and vouchers backing up accountings may be requested. Also, the changes allow alternative means of verifying an expenditure if receipts cannot be produced because the receipts were lost or destroyed."

Section 106 – Hearing of the Account – This section amends NRS 159.181 to provide that the court order settling and allowing the account submitted by the guardian is a final order and is conclusive against all interested persons, except a ward who requests an examination of any account after the ward's legal disability is removed. Further, this section adds that if the court finds that the interested person who objected to the account did not object in good faith or in furtherance of the best interests of the ward, the court may order the interested person to pay to the estate of the ward all or part of the expenses associated with the objection.

Additional Information: Proponents note, "This proposed addition to Chapter 159 is imported from Chapter 148 (probate code), specifically the final order provisions of NRS 155, in an attempt to make Chapter 159 more inclusive in both law and procedure. Currently, the court and practitioners must look to various chapters of the probate code for guidance. The Nevada Supreme Court has recently stated, in an unpublished opinion, that a guardian's reliance on a section of the probate code was misguided. Therefore, it is imperative to make Chapter 159 as all-inclusive as possible. There is also, a discretionary reimbursement mechanism to the ward's estate if an objection was not brought in good faith."

Section 107 – Compensation and Expenses of the Guardian – This section amends NRS 159.183 to clarify the statutory provisions.

Additional Information: Proponents note the "[c]hanges clean up language."

AMENDMENTS TO EXISTING LAW:
REMOVAL OF GUARDIAN; TERMINATION OF GUARDIANSHIP
(Sections 108 through 116)

Sections 108 – Removal of Guardian; Citation to Guardian – The section amends NRS 159.185 to specify additional conditions under which a guardian may be removed to include filing for bankruptcy, negligently failing to perform any required duty that results in an injury or a substantial likelihood of injury to the ward or the ward's estate.

The section also deletes references to certain procedures involving the removal of a guardian. (Sections 36 through 38 of the bill create new procedures for the removal of a guardian.)

Additional Information: Proponents note, "This proposed addition to Chapter 159 sets forth factors that the court may consider in determining whether a guardian may be removed. It also places a burden on the guardian to advise the court of any such activities."

Section 109 – Successor Guardians – This section amends NRS 159.187 to require that a ward be served with a petition to appoint another guardian when one dies or is removed by court order. If the ward does not object to the appointment the ward is not required to attend the hearing.

Additional Information: Proponents note, "This proposed addition to Chapter 159 is necessary to advise the Ward of a change in guardian".

Section 110 – Petition for Termination or Modification – This section amends NRS 159.1905 to require the petition to include the relationship of the petitioner to the ward, and whether the termination or modification is sought for a guardianship of the person, of the estate, or of the person and the estate. In addition, this section authorizes the court to appoint an attorney to represent the ward under certain circumstances.

The section specifies the petitioner has the burden of proof to show by clear and convincing evidence that the change is in the best interests of the ward. A citation must be issued to the guardian and all interested persons requiring them to appear and show cause when the termination or modification should not be granted. If the court finds the petitioner did not file in good faith or in the best interests of the ward, the court may disallow attorney's fees and impose sanctions.

Additional Information: Proponents note, "Section 1 was added to assist the court and parties in determining who is filing for termination or modification and why. Section 2 allows for the appointment of an attorney for the ward. Section 3 codifies the burden of proof and who carries the burden. Section 4 makes it necessary to cite in all interested parties. Section 5 is necessary to place all on notice that the Court may, in its discretion, impose fees incurred on the Petitioner, if the Petitioner is unsuccessful and the petition was not brought in good faith."

Section 111 – Termination of Guardianship – This section amends NRS 159.191 to revise the date for termination of the guardianship of a minor to provide that it terminates on the date the ward reaches 18 years of age *or* on the date the ward graduates from high school or becomes 19 years of age, whichever is sooner. This extension applies if the ward will be older than 18 years of age upon graduation, and both the ward and the guardian consent to continue the guardianship.

This section also specifies that a guardianship of the estate is terminated if the court removes the guardian or accepts the guardian's resignation and does not appoint a successor guardian or orders the guardianship terminated because it is not necessary.

Additional Information: Proponents note, "Subsection 1(a) clarifies what the law is with regard to when a guardianship of a person is terminated. Guardianships of minors are changed to allow for continuation of the guardianship beyond 18 years of age if the minor is still in high school. This change parallels the language contained in the child support statutes. The rationale behind the change is twofold. First, the guardian may still collect child support, if they receive it. Secondly, the guardian may still carry insurance for the minor still in high school. The addition to section 2 is necessary to clarify when a guardianship of an estate is terminated."

Section 112 – Winding Up Affairs – This section amends NRS 159.193 to add certain provisions regarding the winding up of the affairs of a guardianship. This section revises the period in which the guardian must wind up the affairs of the guardianship and adds that to wind up the affairs, the guardian, with prior approval of the court, may continue any activity that the guardian believes is appropriate and necessary or was commenced before the termination of the guardianship.

Additional Information: Proponents note, "This proposed addition to Chapter 159 is necessary as oftentimes a guardian is unable to wind down a guardianship in 90 days. This is generally due to tax issues. Rather than be saddled with an arbitrary number of days, this gives the Court discretion to determine what is reasonable under the circumstances. Oftentimes, a guardianship when terminated by death will not require a probate if the net estate is less than \$50,000, but that the guardian may need a bit more time to wind up the affairs and terminate, thus avoiding another probate proceeding. See, NRS 159.197."

Subsection 2 contemplates allowing a guardian to continue to fulfill necessary contractual obligations. For instance, the guardian could continue with the confirmation of a sale of real estate or personal property during the winding-up phase of the guardianship."

Section 113 – Disposition of Claims of Creditor After Termination of Guardianship by Death of Ward – This section amends NRS 159.195 to replace references to "executor or administrator" with "personal representative" and references an exception to this statute under NRS 159.197, as amended by Section 114.

Additional Information: Proponents note the "[c]hanges clean up language and reflect correct terminology."

Section 114 – Delivery or Distribution of Property of the Ward – This section amends NRS 159.197 to authorize the guardian to petition the court to have the title to the property modified to reflect the manner in which title was held before the guardianship was established so that the property is distributed to the intended beneficiary or former joint owner of the property.

Additional Information: Proponents note, "This proposed addition to Chapter 159 is imported from Chapter 146 (probate code), small estates, in an attempt to make Chapter 159 more inclusive in both law and procedure. Currently, the court and practitioners must look to various chapters of the probate code for guidance. Also this section gives direction on distributing non-probate assets belonging to the Ward. The

Nevada Supreme Court has recently stated, in an unpublished opinion, that a guardian's reliance on a section of the probate code was misguided. Therefore, it is imperative to make Chapter 159 as all-inclusive as possible. Subsection 2 reverses ademption. See section 103 for an explanation of ademption"

Section 115 – Discharge of the Guardian; Exoneration of the bond – This section amends NRS 159.199 to specify the guardian is not relieved of liability until an order of discharge is entered and filed with the court.

Additional Information: Proponents note, "This proposed addition to Chapter 159 is necessary as many practitioners believe that an Order Approving Final Account discharges the Guardian. All acts set forth in the Order must be complied with, evidence forwarded to court, then an Order of Final Discharge may be provided and potential liability is finally absolved."

Section 116 – Summary Proceedings – This section amends NRS 159.201 to add that the court may grant summary administration if the value of the ward's property does not exceed \$5,000. This section also adds that whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian is required to file an inventory and record of value. If, at any time, the net value of the estate of the ward exceeds \$5,000, the guardian is required to file an amended inventory and accounting with the court, the guardian must file annual accountings and the court may require the guardian to post a bond.

Additional Information: Proponents note, "This proposed addition to Chapter 159 is helpful, as there has been some debate whether the terms "if, at any time" includes the time of filing the petition for appointment. In order to expressly allow summary guardianship on an opening petition this section is warranted. Also, subpart 3 clears up confusion as for the need to file an inventory if a summary administration is granted at the same time the petition for appointment is granted. Subpart 4 delineates what must occur when a ward's estate exceeds \$5,000.00."

AMENDMENTS TO EXISTING LAW:
APPOINTMENT OF GUARDIAN OF A MINOR
WITHOUT APPROVAL OF THE COURT
(Section 117)

Section 117 – Temporary Guardian of the Person of a Minor – This section amends NRS 159.205 to revise existing laws to provide that a parent may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of that child. The written instrument must include the date of appointment, the names of the parent, the child and the appointed guardian, and notarization of the parent's and guardian's signatures. The appointment is valid for 6 months unless a shorter term is specified or the guardianship is set to terminate upon the happening of a particular event that occurs in less than 6 months.

An appointment of a short-term guardian for a minor who is 14 years of age or older may only be made if the minor provides written consent. Further, such an appointment does not affect the rights of the minor's other parent. A parent is prohibited from making such an appointment if the minor child has another parent whose rights have not been terminated, whose whereabouts are known, and who is willing to care for the minor. An exception is provided if the other parent provides written consent.

Additional Information: Proponents note, "The changes were made to clean up language in order to alleviate confusion between court ordered temporary guardianships and out-of-court parental consent guardianships contained in this provision. The changes provide a name for the out-of-court guardianship for ease of reference and differentiation. The new name is "short-term guardianships."

AMENDMENTS TO EXISTING LAW:
STANDING TO PETITION FOR REMOVAL
(Section 118)

Section 118 – Petition for Removal of Guardian of Older Person under Chapter 200 of NRS (Crimes Against the Person) – This section amends NRS 200.5096 to add a reference to the new provisions in Section 36 of the bill regarding standing to petition for removal of a guardian.

ADDITIONAL PROVISIONS
(Sections 119 and 120)

Section 119 – Repeals NRS 159.029 (Pending Proceedings under Former Law)

Section 120 – Effective Date of Amendatory Provisions – This section specifies that the amendatory provisions of the bill apply to any proceeding or matter commenced or undertaken on or after October 1, 2003. This provision means that any pending proceedings will not be affected by the provisions of this bill.

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