

SENATE BILL NO. 353—COMMITTEE ON JUDICIARY

MARCH 25, 2005

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Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing guardianships. (BDR 13-462)

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

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

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AN ACT relating to guardianships; requiring certain guardians to meet certain qualifications; requiring that a guardianship petition include proof of such qualifications under certain circumstances; expanding the list of guardians who may be appointed by the court for a minor under certain circumstances; providing the circumstances under which certain guardians may not receive compensation or expenses for certain services; and providing other matters properly relating thereto.

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

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

3     **Sec. 2.** *“Private professional guardian” means a person who*  
4     *receives compensation for services as a guardian to three or more*  
5     *wards who are not related to the person by blood or marriage. The*  
6     *term does not include:*

7         1. *A governmental agency.*

8         2. *A public guardian appointed or designated pursuant to the*  
9     *provisions of chapter 253 of NRS.*

10        3. *A banking corporation, as defined in NRS 657.016, or an*  
11     *organization permitted to act as fiduciary pursuant to NRS*  
12     *662.245 if it is appointed as guardian of an estate only.*

13        4. *A trust company, as defined in NRS 669.070.*



1       5. A court-appointed attorney licensed to practice law in this  
2 State.

3       Sec. 3. 1. A private professional guardian, if a person, must  
4 be qualified to serve as a guardian pursuant to NRS 159.059 and  
5 must be a registered guardian or master guardian unless a  
6 hearing is held and the court finds that good cause exists to waive  
7 the requirement that the private professional guardian be a  
8 registered guardian or master guardian.

9       2. A private professional guardian, if an entity, must be  
10 qualified to serve as a guardian pursuant to NRS 159.059 and  
11 must have a registered guardian or master guardian involved in  
12 the day-to-day operation or management of the entity unless a  
13 hearing is held and the court finds that good cause exists to waive  
14 the requirement that the private professional guardian have a  
15 registered guardian or master guardian involved in the day-to-day  
16 operation or management of the entity.

17       3. As used in this section:

18       (a) "Entity" includes, without limitation, a corporation,  
19 whether or not for profit, a limited-liability company and a  
20 partnership.

21       (b) "Master guardian" means a person who is certified by the  
22 National Guardianship Foundation or any successor organization  
23 as a master guardian.

24       (c) "Person" means a natural person.

25       (d) "Registered guardian" means a person who is certified by  
26 the National Guardianship Foundation or any successor  
27 organization as a registered guardian.

28       Sec. 4. NRS 159.013 is hereby amended to read as follows:

29       159.013 As used in this chapter, unless the context otherwise  
30 requires, the words and terms defined in NRS 159.014 to 159.027,  
31 inclusive, and section 2 of this act have the meanings ascribed to  
32 them in those sections.

33       Sec. 5. NRS 159.044 is hereby amended to read as follows:

34       159.044 1. Except as otherwise provided in NRS 127.045, a  
35 proposed ward, a governmental agency, a nonprofit corporation or  
36 any interested person may petition the court for the appointment of a  
37 guardian.

38       2. To the extent the petitioner knows or reasonably may  
39 ascertain or obtain, the petition must include, without limitation:

40       (a) The name and address of the petitioner.

41       (b) The name, date of birth and current address of the proposed  
42 ward.

43       (c) A copy of one of the following forms of identification of the  
44 proposed ward which must be placed in the records relating to the



guardianship proceeding and, except as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

➔ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 60 days after the appointment of a guardian or as otherwise ordered by the court.

(d) If the proposed ward is a minor, the date on which he will attain the age of majority and:

(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and

(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.

(e) Whether the proposed ward is a resident or nonresident of this State.

(f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.

(g) The name, date of birth and current address of the proposed guardian. *If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of section 3 of this act. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.*

(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which he was convicted and whether the proposed guardian was placed on probation or parole.



(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. The documentation may include, without limitation:

(1) A certificate signed by a physician who is licensed to practice medicine in this State stating the need for a guardian;

(2) A letter signed by any governmental agency in this State which conducts investigations stating the need for a guardian; or

(3) A certificate signed by any other person whom the court finds qualified to execute a certificate stating the need for a guardian.

(k) Whether the appointment of a general or a special guardian is sought.

(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.

(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.

(n) The relationship, if any, of the petitioner to the proposed ward and the interest, if any, of the petitioner in the appointment.

(o) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.

(p) Whether the guardianship is sought as the result of an investigation of a report of abuse or neglect that is conducted pursuant to chapter 432B of NRS by an agency which provides child welfare services. As used in this paragraph, "agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(q) Whether the proposed ward is a party to any pending criminal or civil litigation.

(r) Whether the guardianship is sought for the purpose of initiating litigation.

(s) 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.

**Sec. 6.** NRS 159.059 is hereby amended to read as follows:

159.059 ~~Any~~ *Except as otherwise provided in section 3 of this act, any* qualified person or entity that the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who:

1. Is an incompetent.



- 1       2. Is a minor.
- 2       3. Has been convicted of a felony relating to the position of a
- 3 guardian, unless the court finds that it is in the best interests of the
- 4 ward to appoint the convicted felon as the guardian of the ward.
- 5       4. Has been suspended for misconduct or disbarred from:
- 6       (a) The practice of law;
- 7       (b) The practice of accounting; or
- 8       (c) Any other profession which:
- 9           (1) Involves or may involve the management or sale of
- 10 money, investments, securities or real property; and
- 11           (2) Requires licensure in this State or any other state,
- 12 ➔ during the period of the suspension or disbarment.
- 13       5. Is a nonresident of this State and:
- 14       (a) Is not a foreign guardian of a nonresident proposed ward
- 15 pursuant to subsection 2 of NRS 159.049;
- 16       (b) Has not associated as a coguardian, a resident of this State or
- 17 a banking corporation whose principal place of business is in this
- 18 State; and
- 19       (c) Is not a petitioner in the guardianship proceeding.
- 20       6. Has been judicially determined, by clear and convincing
- 21 evidence, to have committed abuse, neglect or exploitation of a
- 22 child, spouse, parent or other adult, unless the court finds that it is in
- 23 the best interests of the ward to appoint the person as the guardian of
- 24 the ward.

25       **Sec. 7.** NRS 159.061 is hereby amended to read as follows:

26       159.061 1. The parents of a minor, or either parent, if

27 qualified and suitable, are preferred over all others for appointment

28 as guardian for the minor. The appointment of a parent as a guardian

29 of the person must not conflict with a valid order for custody of the

30 minor. In determining whether the parents of a minor, or either

31 parent, is qualified and suitable, the court shall consider, without

32 limitation:

- 33       (a) Which parent has physical custody of the minor;
- 34       (b) The ability of the parents or parent to provide for the basic
- 35 needs of the child, including, without limitation, food, shelter,
- 36 clothing and medical care;
- 37       (c) Whether the parents or parent has engaged in the habitual use
- 38 of alcohol or any controlled substance during the previous 6 months,
- 39 except the use of marijuana in accordance with the provisions of
- 40 chapter 453A of NRS; and
- 41       (d) Whether the parents or parent has been convicted of a crime
- 42 of moral turpitude, a crime involving domestic violence or a crime
- 43 involving the exploitation of a child.

44       2. Subject to the preference set forth in subsection 1, the court

45 shall appoint as guardian for an incompetent, a person of limited



1 capacity or minor the qualified person who is most suitable and is  
2 willing to serve.

3 3. In determining who is most suitable, the court shall give  
4 consideration, among other factors, to:

5 (a) Any request for the appointment as guardian for an  
6 incompetent contained in a written instrument executed by the  
7 incompetent while competent.

8 (b) Any nomination of a guardian for an incompetent, minor or  
9 person of limited capacity contained in a will or other written  
10 instrument executed by a parent or spouse of the proposed ward.

11 (c) Any request for the appointment as guardian for a minor 14  
12 years of age or older made by the minor.

13 (d) The relationship by blood, adoption or marriage of the  
14 proposed guardian to the proposed ward. In considering preferences  
15 of appointment, the court may consider relatives of the half blood  
16 equally with those of the whole blood. The court may consider  
17 relatives in the following order of preference:

18 (1) Spouse.

19 (2) Adult child.

20 (3) Parent.

21 (4) Adult sibling.

22 (5) Grandparent or adult grandchild.

23 (6) Uncle, aunt, adult niece or adult nephew.

24 (e) Any recommendation made by a master of the court or  
25 special master pursuant to NRS 159.0615.

26 (f) Any request for the appointment of any other interested  
27 person that the court deems appropriate.

28 4. If the court finds that there is no suitable person to appoint  
29 as guardian pursuant to subsection 3, the court may appoint as  
30 guardian:

31 (a) The public guardian of the county where the ward resides, if:

32 (1) There is a public guardian in the county where the ward  
33 resides; and

34 (2) The proposed ward qualifies for a public guardian  
35 pursuant to chapter 253 of NRS; ~~for~~

36 (b) A private fiduciary who may obtain a bond in this State and  
37 who is a resident of this State, if the court finds that the interests of  
38 the ward will be served appropriately by the appointment of a  
39 private fiduciary ~~H~~; or

40 (c) *A private professional guardian who meets the*  
41 *requirements of section 3 of this act.*

42 **Sec. 8.** NRS 159.183 is hereby amended to read as follows:

43 159.183 1. Subject to the discretion and approval of the court  
44 ~~H~~ *and except as otherwise provided in subsection 4*, a guardian  
45 must be allowed:



- 1 (a) Reasonable compensation for the guardian's services;
- 2 (b) Necessary and reasonable expenses incurred in exercising
- 3 the authority and performing the duties of a guardian; and
- 4 (c) Reasonable expenses incurred in retaining accountants,
- 5 attorneys, appraisers or other professional services.

6 2. Reasonable compensation and services must be based upon  
7 similar services performed for persons who are not under a legal  
8 disability. In determining whether compensation is reasonable, the  
9 court may consider:

- 10 (a) The nature of the guardianship;
- 11 (b) The type, duration and complexity of the services required;
- 12 and
- 13 (c) Any other relevant factors.

14 3. In the absence of an order of the court pursuant to this  
15 chapter shifting the responsibility of the payment of compensation  
16 and expenses, the payment of compensation and expenses must be  
17 paid from the estate of the ward. In evaluating the ability of a ward  
18 to pay such compensation and expenses, the court may consider:

- 19 (a) The nature, extent and liquidity of the ward's assets;
- 20 (b) The disposable net income of the ward;
- 21 (c) Any foreseeable expenses; and
- 22 (d) Any other factors that are relevant to the duties of the
- 23 guardian pursuant to NRS 159.079 or 159.083.

24 ***4. A private professional guardian is not allowed***  
25 ***compensation or expenses for services incurred by the private***  
26 ***professional guardian as a result of a petition to have him***  
27 ***removed as guardian if the court removes the private professional***  
28 ***guardian pursuant to the provisions of subsection 2, 4, 5, 6 or 8 of***  
29 ***NRS 159.185.***

30 **Sec. 9.** NRS 159.185 is hereby amended to read as follows:

31 159.185 The court may remove a guardian if the court  
32 determines that:

33 1. The guardian has become mentally incompetent, unsuitable  
34 or otherwise incapable of exercising the authority and performing  
35 the duties of a guardian as provided by law;

36 2. The guardian is no longer qualified to act as a guardian  
37 pursuant to NRS 159.059;

38 3. The guardian has filed for bankruptcy within the previous 5  
39 years;

40 4. The guardian of the estate has mismanaged the estate of the  
41 ward;

42 5. The guardian has negligently failed to perform any duty as  
43 provided by law or by any order of the court and:

- 44 (a) The negligence resulted in injury to the ward or his estate; or



1 (b) There was a substantial likelihood that the negligence would  
2 result in injury to the ward or his estate;

3 6. The guardian has intentionally failed to perform any duty as  
4 provided by law or by any lawful order of the court, regardless of  
5 injury; ~~for~~

6 7. The best interests of the ward will be served by the  
7 appointment of another person as guardian ~~for~~; or

8 *8. The guardian is a private professional guardian who is no*  
9 *longer qualified as a private professional guardian pursuant to*  
10 *section 3 of this act.*

11 **Sec. 10.** 1. Except as otherwise provided in this section, the  
12 amendatory provisions of this act apply to a person appointed as a  
13 guardian pursuant to the provisions of chapter 159 of NRS on or  
14 after October 1, 2005.

15 2. A person who receives compensation for services as a  
16 guardian to three or more wards who are not related to the person by  
17 blood or marriage on October 1, 2005, and who does not meet the  
18 requirements of section 3 of this act is exempt from those  
19 requirements until October 1, 2006.

20 3. After October 1, 2006, in order to serve as a private  
21 professional guardian, a person described in subsection 2 must meet  
22 the requirements of section 3 of this act.

