

Amendment No. 182

Senate Amendment to Senate Bill No. 128

(BDR 13-156)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date		SENATE ACTION				Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____			Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____			Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____			Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

MNM/BAW



Date: 4/22/2011

S.B. No. 128—Revises provisions governing guardianships. (BDR 13-156)



SENATE BILL NO. 128—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON SENIOR
CITIZENS, VETERANS AND ADULTS WITH SPECIAL NEEDS)

PREFILED FEBRUARY 4, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing guardianships. (BDR 13-156)

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

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

AN ACT relating to guardianships; revising provisions governing the appointment, powers and duties of guardians; requiring certain guardians to ~~submit to~~ undergo a background investigation ~~as a condition of their appointment; requiring the Aging and Disability Services Division of the Department of Health and Human Services to adopt certain regulations;~~ at their own cost and expense; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law governs the appointment, powers and duties of guardians. (Chapter 159 of NRS) ~~[Section 2 of this bill authorizes the court, as a condition of the appointment of a guardian, to require the guardian to complete any available training concerning guardianships. Section 3 of this bill requires a guardian to present certain documentation to a bank or other financial institution before the guardian may access an account or other asset of a ward that is held by the bank or other financial institution. Section 4 of this bill revises the provisions governing the qualifications, appointment, powers and duties of a guardian ad litem, including a requirement that a guardian ad litem who is not an attorney submit to a background investigation as a condition of his or her appointment. Section 5 of this bill revises the provisions governing payment of the compensation and expenses of an attorney who is appointed to represent an adult ward or proposed adult ward, including a requirement that generally such compensation and expenses be paid from the estate of the ward or proposed ward. Section 6 of this bill requires the Aging and Disability Services Division of the Department of Health and Human Services to adopt regulations prescribing certain forms that must be used when a proposed ward is unable to attend the hearing for the appointment of a guardian.] Section 7 of this bill requires ~~that~~ a private professional guardian ~~agree to comply with certain standards of practice and ethics and requires that such a guardian who is not an attorney submit to a background investigation as a condition of his or her appointment.]~~ to undergo a background investigation at his or her own cost and expense and to present the results of the background investigation to the court upon request. Section 8 of this bill requires every guardian to file a verified acknowledgment of the duties and responsibilities of a guardian before performing any duties as a guardian. The acknowledgment must set forth certain provisions, including certain specific duties of the guardian. The court may exempt a public guardian or private professional guardian~~

from filing an acknowledgment in each case and may instead require the guardian to file a general acknowledgment which covers all guardianships to which the guardian may be appointed. Section 13 of this bill prohibits the removal of a guardian by the court if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. NRS 159.0595 is hereby amended to read as follows:

159.0595 1. A private professional guardian, if a person, must be qualified to serve as a guardian pursuant to NRS 159.059 and must be a certified guardian.

2. A private professional guardian, if an entity, must be qualified to serve as a guardian pursuant to NRS 159.059 and must have a certified guardian involved in the day-to-day operation or management of the entity.

~~3. [Before a person who is not an attorney may be appointed as a private professional guardian, the person seeking appointment as a private professional guardian must submit to the court completed fingerprint cards and a form authorizing an investigation of the person's background and the submission of a complete set of the person's fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The fingerprint cards and authorization form submitted must be those which are provided to the person by the court. The person's fingerprints must be taken by an agency of law enforcement.~~

~~4. The person seeking appointment as a private professional guardian shall pay the cost of a background investigation required by subsection 3 and, except as otherwise provided in NRS 239.0115, the court shall keep the results of the investigation confidential.] A private professional guardian shall, at his or her own cost and expense:~~

(a) Undergo a background investigation which requires the submission of a complete set of his or her fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(b) Present the results of the background investigation to the court upon request.

~~[5.]~~ 4. As used in this section:

(a) "Certified guardian" means a person who is certified by the Center for Guardianship Certification or any successor organization ~~and who agrees to comply with the most recent version of the Standards of Practice for Guardians and the Model Code of Ethics for Guardians that have been adopted by the National Guardianship Association or its successor.]~~

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

(c) "Person" means a natural person.

Sec. 8. NRS 159.073 is hereby amended to read as follows:

159.073 1. Every guardian, ~~shall~~ before entering upon his or her duties as guardian and before letters of guardianship may issue ~~to~~

~~to~~, shall:

(a) Take and subscribe the official oath which must:

~~(a)~~ (1) Be endorsed on the letters of guardianship; and

~~(b)~~ (2) State that the guardian will well and faithfully perform the duties of guardian according to law.

~~(c)~~ (b) File in the proceeding the appropriate documents which include, without limitation, the full legal name of the guardian and the residence and post office addresses of the guardian.

(c) *Except as otherwise required in subsection 2, make and file in the proceeding a verified acknowledgment of the duties and responsibilities of a guardian. The acknowledgement must set forth:*

(1) *A summary of the duties, functions and responsibilities of a guardian, including, without limitation, the duty to ~~act~~:*

(I) Act in the best interest of the ward at all times ~~to protect the interests of the ward above the interests of the guardian and to protect the ward from any foreseeable harm caused by any person~~

(II) Provide the ward with medical, surgical, dental, psychiatric, psychological, hygienic or other care and treatment as needed, with adequate food and clothing and with safe and appropriate housing.

(III) Protect, preserve and manage the income, assets and estate of the ward and utilize the income, assets and estate of the ward solely for the benefit of the ward.

(IV) Maintain the assets of the ward in the name of the ward or the name of the guardianship. Except when the spouse of the ward is also his or her guardian, the assets of the ward must not be commingled with the assets of any third party.

(2) *A summary of the statutes, regulations, rules and standards governing the ~~management of the assets and income of the ward~~ duties of a guardian.*

(3) *A list of actions regarding the ward that require the prior approval of the court. ~~to~~*

(4) *A statement of the need for accurate recordkeeping and the filing of ~~inventories, accountings and~~ annual reports with the court ~~to~~*

~~(5) Any additional information required by the court; and~~

~~(6) A signature paragraph that is in substantially the following form:~~

~~I hereby certify that I have read and reviewed this acknowledgment of the duties and responsibilities of a guardian and that I understand the terms and conditions under which the guardianship must be managed. I agree to comply with the laws of the State of Nevada governing guardianships and understand that failure to comply with any such law or with any order of the court may result in my removal as guardian and may subject me to such penalties as provided by law.~~ *regarding the finances and well-being of the ward.*

2. The court may exempt a public guardian or private professional guardian from filing an acknowledgment in each case and, in lieu thereof, require the public guardian or private professional guardian to file a general acknowledgment covering all guardianships to which the guardian may be appointed by the court.

1 **Sec. 9. (Deleted by amendment.)**

2 **Sec. 10. (Deleted by amendment.)**

3 **Sec. 11. (Deleted by amendment.)**

4 **Sec. 12.** NRS 159.183 is hereby amended to read as follows:

5 159.183 1. Subject to the discretion and approval of the court and except as
6 otherwise provided in subsection 4, a guardian must be allowed:

7 (a) Reasonable compensation for the guardian's services;

8 (b) Necessary and reasonable expenses incurred in exercising the authority and
9 performing the duties of a guardian; and

10 (c) Reasonable expenses incurred in retaining accountants, attorneys,
11 appraisers or other professional services.

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

15 (a) The nature of the guardianship;

16 (b) The type, duration and complexity of the services required; and

17 (c) Any other relevant factors.

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

23 (a) The nature, extent and liquidity of the ward's assets;

24 (b) The disposable net income of the ward;

25 (c) Any foreseeable expenses; and

26 (d) Any other factors that are relevant to the duties of the guardian pursuant to
27 NRS 159.079 or 159.083.

28 4. A private professional guardian is not allowed compensation or expenses
29 for services incurred by the private professional guardian as a result of a petition to
30 have him or her removed as guardian if the court removes the private professional
31 guardian pursuant to the provisions of *paragraph (b), (d), (e), (f) or (h) of*
32 *subsection ~~2, 4, 5, 6 or 8~~ 1* of NRS 159.185.

33 ~~*5. The court shall give the needs of the ward priority over the payment of*~~
34 ~~*the compensation and expenses of the guardian.*~~

35 **Sec. 13.** NRS 159.185 is hereby amended to read as follows:

36 159.185 1. The court may remove a guardian if the court determines that:

37 ~~1-1~~ (a) The guardian has become mentally incompetent, unsuitable or
38 otherwise incapable of exercising the authority and performing the duties of a
39 guardian as provided by law;

40 ~~2-1~~ (b) The guardian is no longer qualified to act as a guardian pursuant to
41 NRS 159.059;

42 ~~3-1~~ (c) The guardian has filed for bankruptcy within the previous 5 years;

43 ~~4-1~~ (d) The guardian of the estate has mismanaged the estate of the ward;

44 ~~5-1~~ (e) The guardian has negligently failed to perform any duty as provided by
45 law or by any order of the court and:

46 ~~6-1~~ (1) The negligence resulted in injury to the ward or the estate of the ward;
47 or

48 ~~7-1~~ (2) There was a substantial likelihood that the negligence would result in
49 injury to the ward or the estate of the ward;

50 ~~8-1~~ (f) The guardian has intentionally failed to perform any duty as provided
51 by law or by any lawful order of the court, regardless of injury;

52 ~~9-1~~ (g) The best interests of the ward will be served by the appointment of
53 another person as guardian; or

1 ~~§8.1~~ (h) The guardian is a private professional guardian who is no longer
2 qualified as a private professional guardian pursuant to NRS 159.0595.

3 2. *A guardian may not be removed if the sole reason for removal is the lack*
4 *of money to pay the compensation and expenses of the guardian.*

5 Sec. 14. (Deleted by amendment.)

6 Sec. 15. (Deleted by amendment.)