

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 undergo a background investigation at their own cost and expense; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law governs the appointment, powers and duties of guardians.
2 (Chapter 159 of NRS) **Section 7** of this bill requires a private professional guardian
3 to undergo a background investigation at his or her own cost and expense and to
4 present the results of the background investigation to the court upon request.
5 **Section 8** of this bill requires every guardian to file a verified acknowledgment of
6 the duties and responsibilities of a guardian before performing any duties as a
7 guardian. The acknowledgment must set forth certain provisions, including certain
8 specific duties of the guardian. The court may exempt a public guardian or private
9 professional guardian from filing an acknowledgment in each case and may instead
10 require the guardian to file a general acknowledgment which covers all
11 guardianships to which the guardian may be appointed. **Section 13** of this bill
12 prohibits the removal of a guardian by the court if the sole reason for removal is the
13 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:

1 **Section 1.** (Deleted by amendment.)

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

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

4 **Sec. 4.** (Deleted by amendment.)

5 **Sec. 5.** (Deleted by amendment.)

6 **Sec. 6.** (Deleted by amendment.)

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

8 159.0595 1. A private professional guardian, if a person,
9 must be qualified to serve as a guardian pursuant to NRS 159.059
10 and must be a certified guardian.

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

15 3. *A private professional guardian shall, at his or her own*
16 *cost and expense:*

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

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

24 4. As used in this section:

25 (a) "Certified guardian" means a person who is certified by the
26 Center for Guardianship Certification or any successor organization.

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

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

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

31 159.073 1. Every guardian , ~~{shall,}~~ before entering upon his
32 or her duties as guardian and before letters of guardianship may
33 issue ~~+~~

34 ~~—1.}~~ , shall:

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

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

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

39 ~~{2-}~~ (b) File in the proceeding the appropriate documents which
40 include, without limitation, the full legal name of the guardian and
41 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:

(I) Act in the best interest of the ward at all times.

(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 duties of a guardian.

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

(4) A statement of the need for accurate recordkeeping and the filing of annual reports with the court 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.

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

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

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

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

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

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

2. Reasonable compensation and services must be based upon similar services performed for persons who are not under a legal



1 disability. In determining whether compensation is reasonable, the
2 court may consider:

- 3 (a) The nature of the guardianship;
- 4 (b) The type, duration and complexity of the services required;
- 5 and
- 6 (c) Any other relevant factors.

7 3. In the absence of an order of the court pursuant to this
8 chapter shifting the responsibility of the payment of compensation
9 and expenses, the payment of compensation and expenses must be
10 paid from the estate of the ward. In evaluating the ability of a ward
11 to pay such compensation and expenses, the court may consider:

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

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

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

24 159.185 1. The court may remove a guardian if the court
25 determines that:

26 ~~1-1~~ (a) The guardian has become mentally incompetent,
27 unsuitable or otherwise incapable of exercising the authority and
28 performing the duties of a guardian as provided by law;

29 ~~1-2~~ (b) The guardian is no longer qualified to act as a guardian
30 pursuant to NRS 159.059;

31 ~~1-3~~ (c) The guardian has filed for bankruptcy within the
32 previous 5 years;

33 ~~1-4~~ (d) The guardian of the estate has mismanaged the estate of
34 the ward;

35 ~~1-5~~ (e) The guardian has negligently failed to perform any duty
36 as provided by law or by any order of the court and:

37 ~~1-a~~ (1) The negligence resulted in injury to the ward or the
38 estate of the ward; or

39 ~~1-b~~ (2) There was a substantial likelihood that the negligence
40 would result in injury to the ward or the estate of the ward;

41 ~~1-6~~ (f) The guardian has intentionally failed to perform any
42 duty as provided by law or by any lawful order of the court,
43 regardless of injury;

44 ~~1-7~~ (g) The best interests of the ward will be served by the
45 appointment of another person as guardian; or



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1 ~~18.1~~ (h) The guardian is a private professional guardian who is
2 no longer qualified as a private professional guardian pursuant to
3 NRS 159.0595.

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

7 Sec. 14. (Deleted by amendment.)

8 Sec. 15. (Deleted by amendment.)

