

SENATE BILL NO. 262—SENATORS HARRIS, FARLEY, DENIS;
GOICOECHEA, GUSTAVSON, LIPPARELLI, MANENDO,
SEGERBLOM AND SETTELMAYER

MARCH 13, 2015

JOINT SPONSORS: ASSEMBLYMEN STEWART, NELSON,
SILBERKRAUS, O'NEILL, SEAMAN; ELLIOT ANDERSON,
FIORE, GARDNER, JONES AND WOODBURY

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to guardians.
(BDR 13-643)

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

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

AN ACT relating to guardians; adding provisions governing the appointment of certain preferred persons as guardians for adult wards; revising provisions relating to the appointment of a guardian for a minor; revising requirements governing eligibility to utilize a public guardian; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the appointment, qualifications and duties of guardians for certain minor and adult wards. (Chapter 159 of NRS) Existing law prohibits a nonresident of Nevada from being appointed as a guardian for a minor or adult ward unless the person has associated a co-guardian who is a resident of Nevada or a banking corporation whose principal place of business is in Nevada. (NRS 159.059) Existing law also gives preference to certain persons to be appointed as a guardian for a minor ward but does not give preference to any persons to be appointed as a guardian for an adult ward. (NRS 159.061)

Sections 1 and 6.7 of this bill revise the circumstances under which a court is authorized to appoint a nonresident as a guardian for an adult ward. **Section 6.3** eliminates existing limitations on the authority of a court to appoint a nonresident as a guardian for a minor ward. **Section 1** also requires the court to give preference in appointing a guardian for an adult ward to the following persons in the following



order, whether or not the person is a nonresident: (1) a nominated person, who is a person the adult ward specifically nominated or requested as a guardian in a will, trust or other written document executed by the adult ward while competent; or (2) a relative. If two or more nominated persons are qualified and suitable to be appointed as a guardian, **section 1** authorizes the court to appoint two or more co-guardians or generally requires the court to give preference to the nominated person named in a will, trust or other written document that is part of the adult's established estate plan, but there are certain exceptions for extraordinary circumstances.

In selecting a guardian, **section 1** does not allow the court to give preference to a resident over a nonresident if the court determines that the nonresident would be a more qualified and suitable guardian and the adult would receive continuing care and supervision under the guardianship of the nonresident. If the court selects a nonresident guardian, **section 1** requires the court to order the nonresident guardian to designate a registered agent in this State.

Section 2.3 of this bill revises the existing list of persons who are preferred for appointment as a guardian to a minor to include any person recommended by: (1) an agency which provides child welfare services, an agency which provides child protective services or a similar agency; or (2) a guardian ad litem or court appointed special advocate who represents the minor.

Sections 2.1-2.9 and 6.3 of this bill make conforming changes to reflect the changes made by the other sections of this bill.

Existing law provides that a ward is eligible to have a public guardian appointed as his or her permanent or general individual guardian if: (1) there is no relative or friend able and willing to be appointed as a guardian for the ward; or (2) the court removes a private professional guardian previously appointed for the ward. (NRS 253.200) **Section 3** of this bill provides for the appointment of a public guardian for an incompetent adult who failed to nominate a person for appointment as guardian while he or she was still competent or if the nominated person is not suitable or willing to serve as guardian.

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

Section 1. Chapter 159 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, in a proceeding to appoint a guardian for an adult, the court shall give preference to a nominated person or relative, in that order of preference:

(a) Whether or not the nominated person or relative is a resident of this State; and

(b) If the court determines that the nominated person or relative is qualified and suitable to be appointed as guardian for the adult.

2. In determining whether any nominated person, relative or other person listed in subsection 4 is qualified and suitable to be appointed as guardian for an adult, the court shall consider, if applicable and without limitation:



1 (a) *The ability of the nominated person, relative or other*
2 *person to provide for the basic needs of the adult, including,*
3 *without limitation, food, shelter, clothing and medical care;*

4 (b) *Whether the nominated person, relative or other person*
5 *has engaged in the habitual use of alcohol or any controlled*
6 *substance during the previous 6 months, except the use of*
7 *marijuana in accordance with the provisions of chapter 453A of*
8 *NRS;*

9 (c) *Whether the nominated person, relative or other person has*
10 *been judicially determined to have committed abuse, neglect,*
11 *exploitation, isolation or abandonment of a child, his or her*
12 *spouse, his or her parent or any other adult, unless the court finds*
13 *that it is in the best interests of the ward to appoint the person as*
14 *guardian for the adult;*

15 (d) *Whether the nominated person, relative or other person is*
16 *incompetent or has a disability; and*

17 (e) *Whether the nominated person, relative or other person has*
18 *been convicted in this State or any other jurisdiction of a felony,*
19 *unless the court determines that any such conviction should not*
20 *disqualify the person from serving as guardian for the adult.*

21 3. *If the court finds that two or more nominated persons are*
22 *qualified and suitable to be appointed as guardian for an adult,*
23 *the court may appoint two or more nominated persons as co-*
24 *guardians or shall give preference among them in the following*
25 *order of preference:*

26 (a) *A person whom the adult nominated for the appointment as*
27 *guardian for the adult in a will, trust or other written instrument*
28 *that is part of the adult's established estate plan and was executed*
29 *by the adult while competent.*

30 (b) *A person whom the adult requested for the appointment as*
31 *guardian for the adult in a written instrument that is not part of*
32 *the adult's established estate plan and was executed by the adult*
33 *while competent.*

34 4. *Subject to the preferences set forth in subsections 1 and 3,*
35 *the court shall appoint as guardian the qualified person who is*
36 *most suitable and is willing to serve. In determining which*
37 *qualified person is most suitable, the court shall, in addition to*
38 *considering any applicable factors set forth in subsection 2, give*
39 *consideration, among other factors, to:*

40 (a) *Any nomination or request for the appointment as*
41 *guardian by the adult.*

42 (b) *Any nomination or request for the appointment as*
43 *guardian by a relative.*

44 (c) *The relationship by blood, adoption, marriage or domestic*
45 *partnership of the proposed guardian to the adult. In considering*



1 *preferences of appointment, the court may consider relatives of the*
2 *half blood equally with those of the whole blood. The court may*
3 *consider any relative in the following order of preference:*

4 *(1) A spouse or domestic partner.*

5 *(2) A child.*

6 *(3) A parent.*

7 *(4) Any relative with whom the adult has resided for more*
8 *than 6 months before the filing of the petition or any relative who*
9 *has a power of attorney executed by the adult while competent.*

10 *(5) Any relative currently acting as agent.*

11 *(6) A sibling.*

12 *(7) A grandparent or grandchild.*

13 *(8) An uncle, aunt, niece, nephew or cousin.*

14 *(9) Any other person recognized to be in a familial*
15 *relationship with the adult.*

16 *(d) Any recommendation made by a master of the court or*
17 *special master pursuant to NRS 159.0615.*

18 *(e) Any request for the appointment of any other interested*
19 *person that the court deems appropriate, including, without*
20 *limitation, a person who is not a relative and who has a power of*
21 *attorney executed by the adult while competent.*

22 *5. The court may appoint as guardian any nominated person,*
23 *relative or other person listed in subsection 4 who is not a resident*
24 *of this State. The court shall not give preference to a resident of*
25 *this State over a nonresident if the court determines that:*

26 *(a) The nonresident is more qualified and suitable to serve as*
27 *guardian; and*

28 *(b) The distance from the proposed guardian's place of*
29 *residence and the adult's place of residence will not affect the*
30 *quality of the guardianship or the ability of the proposed guardian*
31 *to make decisions and respond quickly to the needs of the adult*
32 *because:*

33 *(1) A person or care provider in this State is providing*
34 *continuing care and supervision for the adult;*

35 *(2) The adult is in a secured residential long-term care*
36 *facility in this State; or*

37 *(3) Within 30 days after the appointment of the proposed*
38 *guardian, the proposed guardian will move to this State or the*
39 *adult will move to the proposed guardian's state of residence.*

40 *6. If the court appoints a nonresident as guardian for the*
41 *adult:*

42 *(a) The jurisdictional requirements of NRS 159.1991 to*
43 *159.2029, inclusive, must be met;*



(b) The court shall order the guardian to designate a registered agent in this State in the same manner as a represented entity pursuant to chapter 77 of NRS; and

(c) The court may require the guardian to complete any available training concerning guardianships pursuant to NRS 159.0592, in this State or in the state of residence of the guardian, regarding:

(1) The legal duties and responsibilities of the guardian pursuant to this chapter;

(2) The preparation of records and the filing of annual reports regarding the finances and well-being of the adult required pursuant to NRS 159.073;

(3) The rights of the adult;

(4) The availability of local resources to aid the adult; and

(5) Any other matter the court deems necessary or prudent.

7. If the court finds that there is not any suitable nominated person, relative or other person listed in subsection 4 to appoint as guardian, the court may appoint as guardian:

(a) The public guardian of the county where the adult resides if:

(1) There is a public guardian in the county where the adult resides; and

(2) The adult qualifies for a public guardian pursuant to chapter 253 of NRS;

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

(c) A private professional guardian who meets the requirements of NRS 159.0595.

8. A person is not qualified to be appointed as guardian for an adult if the person has been suspended for misconduct or disbarred from any of the professions listed in this subsection, but the disqualification applies only during the period of the suspension or disbarment. This subsection applies to:

(a) The practice of law;

(b) The practice of accounting; or

(c) Any other profession that:

(1) Involves or may involve the management or sale of money, investments, securities or real property; and

(2) Requires licensure in this State or any other state in which the person practices his or her profession.

9. As used in this section:

(a) "Adult" means a person who is a ward or a proposed ward and who is not a minor.



(b) "Domestic partner" means a person in a domestic partnership.

(c) "Domestic partnership" means:

(1) A domestic partnership as defined in NRS 122A.040; or

(2) A domestic partnership which was validly formed in another jurisdiction and which is substantially equivalent to a domestic partnership as defined in NRS 122A.040, regardless of whether it bears the name of a domestic partnership or is registered in this State.

(d) "Nominated person" means a person, whether or not a relative, whom an adult:

(1) Nominates for the appointment as guardian for the adult in a will, trust or other written instrument that is part of the adult's established estate plan and was executed by the adult while competent.

(2) Requests for the appointment as guardian for the adult in a written instrument that is not part of the adult's established estate plan and was executed by the adult while competent.

(e) "Relative" means a person who is 18 years of age or older and who is related to the adult by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity.

Sec. 2. (Deleted by amendment.)

Sec. 2.1. NRS 159.0595 is hereby amended to read as follows:

159.0595 1. ~~[A]~~ In order for a person to serve as a private professional guardian, ~~[if a person,]~~ the person must be ~~[qualified]~~ :

(a) ~~Qualified~~ to serve as a guardian pursuant to ~~[NRS 159.059]~~ section 1 of this act if the ward is an adult or NRS 159.061 if the ward is a minor; and ~~[must be a]~~

(b) A certified guardian.

2. ~~[A]~~ In order for an entity to serve as a private professional guardian, ~~[if an entity,]~~ the entity must ~~[be]~~ :

(a) ~~Be~~ qualified to serve as a guardian pursuant to ~~[NRS 159.059]~~ section 1 of this act if the ward is an adult; and ~~[must have]~~

(b) ~~Have~~ a certified guardian involved in the day-to-day operation or management of the entity.

3. 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 and to the Federal Bureau of Investigation for their respective reports; and

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



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.

(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. 2.3. NRS 159.061 is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. The appointment of a parent as ~~[a]~~ guardian ~~[or]~~ *for the [person] minor* must not conflict with a valid order for custody of the minor.

2. In determining whether the parents of a minor, or either parent, *or any other person who seeks appointment as guardian for the minor* is qualified and suitable, the court shall consider, *if applicable and* without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents, ~~[or]~~ parent *or other person* to provide for the basic needs of the ~~[child,]~~ *minor*, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents, ~~[or]~~ parent *or other person* has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS; ~~[and]~~

(d) Whether the parents, ~~[or]~~ parent *or other person* has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the *abuse, neglect, exploitation, isolation or abandonment* of a child ~~[]~~, *his or her spouse, his or her parent or any other adult; and*

(e) *Whether the parents, parent or other person has been convicted in this State or any other jurisdiction of a felony.*

~~[2-]~~ 3. Subject to the preference set forth in subsection 1, the court shall appoint as guardian ~~[for an incompetent, a person of limited capacity or minor]~~ the qualified person who is most suitable and is willing to serve.

~~[3-]~~ 4. In determining ~~[who]~~ *which qualified person* is most suitable, the court shall, *in addition to considering any applicable factors set forth in subsection 2*, give consideration, among other factors, to:

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

~~—(b)]~~ Any nomination of a guardian for ~~[an incompetent,]~~ *the* minor ~~[or person of limited capacity]~~ contained in a will or other



written instrument executed by a parent ~~{or spouse}~~ of the ~~{proposed ward}~~.

~~—(c)}~~ *minor.*

(b) Any request ~~{for the appointment as guardian for a}~~ *made by the minor, if he or she is* 14 years of age or older ~~{made by}~~, *for the appointment of a person as guardian for* the minor.

~~{(d)}~~ (c) The relationship by blood ~~{}~~ *or* adoption ~~{or marriage}~~ of the proposed guardian to the ~~{proposed ward}~~ *minor*. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:

(1) ~~{Spouse}~~.

~~—(2) Adult child.~~

~~—(3)}~~ Parent.

~~{(4)}~~ (2) Adult sibling.

~~{(5)}~~ (3) Grandparent. ~~{or adult grandchild.}~~

~~{(6)}~~ (4) Uncle ~~{}~~ *or* aunt. ~~{, adult niece or adult nephew.}~~

~~{(e)}~~ (d) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

~~{(f)}~~ (e) *Any recommendation made by:*

(1) *An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or*

(2) *A guardian ad litem or court appointed special advocate who represents the minor.*

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

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

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

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

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

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

~~—(c) A private professional guardian who meets the requirements of NRS 159.0595.}~~

5. As used in this section, “agency which provides child welfare services” has the meaning ascribed to it NRS 432B.030.

Sec. 2.5. (Deleted by amendment.)



Sec. 2.7. NRS 159.185 is hereby amended to read as follows:

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

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

(b) The guardian is no longer qualified to act as a guardian pursuant to ~~NRS 159.059;~~ *section 1 of this act if the ward is an adult or NRS 159.061 if the ward is a minor;*

(c) The guardian has filed for bankruptcy within the previous 5 years;

(d) The guardian of the estate has mismanaged the estate of the ward;

(e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:

(1) The negligence resulted in injury to the ward or the estate of the ward; or

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

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

(g) The best interests of the ward will be served by the appointment of another person as guardian; or

(h) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to NRS 159.0595.

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

Sec. 2.9. NRS 159.2024 is hereby amended to read as follows:

159.2024 1. To transfer jurisdiction of a guardianship or conservatorship to this State, the guardian, conservator or other interested party must petition the court of this State for guardianship pursuant to NRS 159.1991 to 159.2029, inclusive, to accept guardianship in this State. The petition must include a certified copy of the other state's provisional order of transfer and proof that the ward is physically present in, or is reasonably expected to move permanently to, this State.

2. The court shall issue a provisional order granting a petition filed under subsection 1, unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the ward; or



(b) The guardian or petitioner is not qualified for appointment as a guardian in this State pursuant to ~~NRS 159.059.~~ *section 1 of this act if the ward is an adult or NRS 159.061 if the ward is a minor.*

3. The court shall issue a final order granting guardianship upon filing of a final order issued by the other state terminating proceedings in that state and transferring the proceedings to this State.

4. Not later than 90 days after the issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.

5. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the ward's incapacity and the appointment of the guardian or conservator.

Sec. 3. NRS 253.200 is hereby amended to read as follows:

253.200 1. A resident of Nevada is eligible to have the public guardian of the county in which he or she resides appointed as his or her temporary individual guardian pursuant to NRS 159.0523 or 159.0525.

2. A resident of Nevada is eligible to have the public guardian of a county appointed as his or her permanent or general individual guardian if the proposed ward is a resident of that county and:

(a) The proposed ward has no *nominated person*, relative or friend suitable and willing to serve as his or her guardian; or

(b) The proposed ward has a guardian who the court determines must be removed pursuant to NRS 159.185.

3. A person qualified pursuant to subsection 1 or 2, or anyone on his or her behalf, may petition the district court of the county in which he or she resides to make the appointment.

4. Before a petition for the appointment of the public guardian as a guardian may be filed pursuant to subsection 3, a copy of the petition and copies of all accompanying documents to be filed must be delivered to the public guardian or a deputy public guardian.

5. Any petition for the appointment of the public guardian as a guardian filed pursuant to subsection 3 must include a statement signed by the public guardian or deputy public guardian and in substantially the following form:

The undersigned is the Public Guardian or a Deputy Public Guardian of County. The undersigned certifies that he or she has received a copy of this petition and all accompanying documents to be filed with the court.



6. A petition for the appointment of the public guardian as permanent or general guardian must be filed separately from a petition for the appointment of a temporary guardian.

7. If a person other than the public guardian served as temporary guardian before the appointment of the public guardian as permanent or general guardian, the temporary guardian must file an accounting and report with the court in which the petition for the appointment of a public guardian was filed within 30 days of the appointment of the public guardian as permanent or general guardian.

8. In addition to NRS 159.099, a county is not liable on any written or oral contract entered into by the public guardian of the county for or on behalf of a ward.

9. For the purposes of this section:

(a) Except as otherwise provided in paragraph (b), the county of residence of a person is the county to which the person moved with the intent to reside for an indefinite period.

(b) The county of residence of a person placed in institutional care is the county that was the county of residence of the person before the person was placed in institutional care by a guardian or agency or under power of attorney.

10. As used in this section, "nominated person" has the meaning ascribed to it in section 1 of this act.

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 6.3. NRS 432B.4665 is hereby amended to read as follows:

432B.4665 1. The court may, upon the filing of a petition pursuant to NRS 432B.466, appoint a person as a guardian for a child if:

(a) The court finds:

(1) That the proposed guardian is suitable and is not disqualified from guardianship pursuant to NRS ~~[159.059;]~~ *159.061;*

(2) That the child has been in the custody of the proposed guardian for 6 months or more pursuant to a determination by a court that the child was in need of protection, unless the court waives this requirement for good cause shown;

(3) ~~[Except as otherwise provided in subsection 3, that]~~ *That* the proposed guardian has complied with the requirements of chapter 159 of NRS; and

(4) That the burden of proof set forth in chapter 159 of NRS for the appointment of a guardian for a child has been satisfied;



(b) The child consents to the guardianship, if the child is 14 years of age or older; and

(c) The court determines that the requirements for filing a petition pursuant to NRS 432B.466 have been satisfied.

2. A guardianship established pursuant to this section:

(a) Provides the guardian with the powers and duties provided in NRS 159.079, and subjects the guardian to the limitations set forth in NRS 159.0805;

(b) Is subject to the provisions of NRS 159.065 to 159.076, inclusive, and 159.185 to 159.199, inclusive;

(c) Provides the guardian with sole legal and physical custody of the child;

(d) Does not result in the termination of parental rights of a parent of the child; and

(e) Does not affect any rights of the child to inheritance, a succession or any services or benefits provided by the Federal Government, this state or an agency or political subdivision of this state.

~~[3. The court may appoint as a guardian for a child pursuant to this section for not more than 6 months a person who does not satisfy the residency requirement set forth in subsection 5 of NRS 159.059 if the court determines that appointing such a person is necessary to facilitate the permanent placement of the child.]~~

Sec. 6.7. NRS 159.059 is hereby repealed.

Sec. 7. This act becomes effective on July 1, 2015.

TEXT OF REPEALED SECTION

159.059 Qualifications of guardian. Except as otherwise provided in NRS 159.0595, 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.
2. Is a minor.
3. Has been convicted of a felony, unless the court determines that such conviction should not disqualify the person from serving as the guardian of the ward.
4. Has been suspended for misconduct or disbarred from:
 - (a) The practice of law;
 - (b) The practice of accounting; or
 - (c) Any other profession which:



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(1) Involves or may involve the management or sale of money, investments, securities or real property; and

(2) Requires licensure in this State or any other state, ↪ during the period of the suspension or disbarment.

5. Is a nonresident of this State and:

(a) Has not associated as a coguardian, a resident of this State or a banking corporation whose principal place of business is in this State; and

(b) Is not a petitioner in the guardianship proceeding.

6. Has been judicially determined, by clear and convincing evidence, to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult, unless the court finds that it is in the best interests of the ward to appoint the person as the guardian of the ward.

