SUMMARY—Revises provisions governing guardianships. (BDR 13-565)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

Effect on the State Highway Fund: No.

AN ACT relating to guardianships; revising provisions regarding completion of an assessment of the needs of a proposed protected person; increasing the maximum value of the estate of a protected person for purposes of a summary administration; extending certain periods for filing inventories, accounts and winding up the affairs of guardianships; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the procedures and requirements relating to the appointment of a guardian for a proposed protected person who is an adult. (Chapter 159 of NRS) Existing law requires a petitioner seeking the appointment of a guardian for a proposed protected person to provide the court with certain information and an assessment of the needs of the proposed protected person completed by a licensed physician. The assessment must identify certain limitations of capacity of the proposed protected person and determine whether less restrictive alternatives to guardianship are available and sufficient to support the needs of the proposed protected person. (NRS 159.044) **Section 1** of this bill additionally authorizes completion of the assessment by a

physician employed by the Department of Veterans Affairs or by any other person whom the court finds qualified to execute a certificate demonstrating the need for a guardian.

Existing law authorizes a court to grant a summary administration of a guardianship estate if, after payment of all claims and expenses of the guardianship, the value of the property of the protected person does not exceed $10,000 and requires a guardian granted a summary administration to take certain actions if the net value of the estate later exceeds $10,000. (NRS 159.076) **Section 2** of this bill increases from $10,000 to $25,000 each of these monetary thresholds.

Existing law requires a general or special guardian of the estate to make and file a verified inventory of all of the property of the protected person not later than 60 days after the date of the appointment of the guardian, unless the court allows additional time. (NRS 159.085) **Section 3** of this bill extends the period for filing such an inventory from 60 days to 90 days.

Existing law requires a guardian of the estate or special guardian who is authorized to manage the property of the protected person to make and file a verified account in certain circumstances, including within 30 days after the date of removal of the guardian, unless the court authorizes a longer period. (NRS 159.177) **Section 4** of this bill extends from 30 days to 90 days the period within which a removed guardian is required to file the account if a successor guardian is appointed, unless the court authorizes a longer period.

Existing law generally authorizes a guardian of the estate to retain possession of the property of the protected person and perform certain duties to wind up the affairs of the guardianship for not more than 180 days after the termination of the guardianship or for a period that the court

determines is reasonable and necessary, subject to certain exceptions. One such exception authorizes the court to allow the guardian to retain possession of the property for more than 180 days if the guardian is awaiting certification acknowledging that the guardian has no further liability for taxes on the estate. (NRS 159.193) **Section 5** of this bill increases each of these 180-day periods to 270 days.

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

Section 1. NRS 159.044 is hereby amended to read as follows:

159.044 1. A proposed protected person, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

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

(a) The name and address of the petitioner.

(b) The name, date of birth and current address of the proposed protected person.

(c) A copy of one of the following forms of identification of the proposed protected person which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or 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;

(5) A valid passport number;

(6) A valid permanent resident card number; or

(7) A valid tribal identification card 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 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) Whether the proposed protected person is a resident or nonresident of this State.

(e) The names and addresses of the spouse of the proposed protected person and the relatives of the proposed protected person who are within the second degree of consanguinity.

(f) 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 NRS 159.0595 or 159A.0595. 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 protected person who is not related to the person by blood or marriage. As used in this paragraph, "protected person" includes a protected minor.

(g) 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 provided in NRS 239.0115 or 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;

(5) A valid passport number;

(6) A valid permanent resident card number; or

(7) A valid tribal identification card number.

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

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

(1) A certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a certificate signed by any other person whom the court finds qualified to execute a certificate, stating:

(I) The need for a guardian;

(II) Whether the proposed protected person presents a danger to himself or herself or others;

(III) Whether the attendance of the proposed protected person at a hearing would be detrimental to the proposed protected person;

(IV) Whether the proposed protected person would comprehend the reason for a hearing or contribute to the proceeding; and

(V) Whether the proposed protected person is capable of living independently with or without assistance; and

(2) If the proposed protected person is determined to have the limited capacity to consent to the appointment of a special guardian, a written consent to the appointment of a special guardian from the protected person.

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

(k) A general description and the probable value of the property of the proposed protected person and any income to which the proposed protected person 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 protected person by the United States through the Department of Veterans Affairs, the petition must so state.

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

(m) If the petitioner is not the spouse or natural child of the proposed protected person, a declaration explaining the relationship of the petitioner to the proposed protected person or to the

family or friends of the proposed protected person, if any, and the interest, if any, of the petitioner in the appointment.

(n) 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.

(o) If the guardianship is sought as the result of an investigation of a report of abuse, neglect, exploitation, isolation or abandonment of the proposed protected person, whether the referral was from a law enforcement agency or a state or county agency.

(p) Whether the proposed protected person or the proposed guardian is a party to any pending criminal or civil litigation.

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

(r) Whether the proposed protected person 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.

(s) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

(t) An attestation that information on less restrictive alternatives to guardianship has been provided to the proposed protected person.

3. Before the court makes a finding pursuant to NRS 159.054, a petitioner seeking a guardian for a proposed protected person must provide the court with an assessment of the needs of the proposed protected person completed by a ~~[licensed]~~ physician ~~[which identifies]~~ ***who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs or***

completed by any other person whom the court finds qualified to execute a certificate pursuant to subparagraph (1) of paragraph (i) of subsection 2. The assessment must identify the limitations of capacity of the proposed protected person and how such limitations affect the ability of the proposed protected person to maintain his or her safety and basic needs and ~~[which includes]~~ ***must include*** a determination of whether less restrictive alternatives to guardianship are available and sufficient to support the needs of the proposed protected person. The court may prescribe the form in which the assessment of the needs of the proposed protected person must be filed.

Sec. 2. NRS 159.076 is hereby amended to read as follows:

159.076 1. The court may grant a summary administration if, at any time, it appears to the court that after payment of all claims and expenses of the guardianship the value of the property of the protected person does not exceed ~~[$10,000.]~~ ***$25,000.***

2. If the court grants a summary administration, the court may authorize the guardian of the estate or special guardian who is authorized to manage the property of the protected person to convert the property to cash and sell any of the property, with or without notice, as the court may direct. After the payment of all claims and the expenses of the guardianship, the guardian shall deposit the money in savings accounts or invest the money as provided in NRS 159.117, and hold the investment and all interest, issues, dividends and profits for the benefit of the protected person. The court may dispense with annual accountings and all other proceedings required by this chapter.

3. Whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian shall file an inventory and record of value with the court.

4. If, at any time, the net value of the estate of the protected person exceeds ~~[~~$10,000:~~]~~ ***$25,000:***

(a) The guardian shall file an amended inventory and accounting with the court;

(b) The guardian shall file annual accountings; and

(c) The court may require the guardian to post a bond.

Sec. 3. NRS 159.085 is hereby amended to read as follows:

159.085 1. Not later than ~~[~~60~~]~~ ***90*** days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the protected person which comes to the possession or knowledge of the guardian, including, without limitation, the existence of any trust of which the protected person is currently a beneficiary who is receiving or is entitled to receive distributions.

2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to NRS 159.177.

3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:

(a) All of the estate of the protected person which has come into the possession of the guardian;

(b) All of the money that belongs to the protected person; and

(c) All of the just claims of the protected person against the guardian.

4. A copy of the inventory filed with the court and a notice of the filing must be served on the protected person, his or her attorney and any guardian ad litem representing the protected person.

5. Whenever any property of the protected person not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:

(a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or

(b) Include the property in the next accounting.

6. The court may order which of the two methods described in subsection 5 the guardian shall follow.

7. The court may order all or any part of the property of the protected person appraised as provided in NRS 159.0865 and 159.305.

8. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:

(a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or

(b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

Sec. 4. NRS 159.177 is hereby amended to read as follows:

159.177 1. A guardian of the estate or special guardian who is authorized to manage the property of the protected person shall make and file a verified account in the guardianship proceeding:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian, unless the court orders such an account to be made and filed at a different interval upon a showing of good cause and with the appropriate protection of the interests of the protected person.

(b) Upon filing a petition to resign and before the resignation is accepted by the court.

(c) ~~[Within 30]~~ ***After the removal of the guardian, within:***

(1) Thirty days after the date of ~~[his or her]~~ removal, ***if a successor guardian is not appointed; or***

(2) Ninety days after the date of removal, if a successor guardian is appointed,

➥ unless the court authorizes a longer period.

(d) Within 90 days after the date of termination of the guardianship or the death of the protected person, unless the court authorizes a longer period.

(e) At any other time as required by law or as the court may order.

2. An account filed pursuant to this section must be served on the attorney of the protected person and, if the protected person is living, on the protected person.

Sec. 5. NRS 159.193 is hereby amended to read as follows:

159.193 1. The guardian of the estate is entitled to retain possession of the property of the protected person already in the control of the guardian and is authorized to perform the duties of the guardian to wind up the affairs of the guardianship:

(a) Except as otherwise provided in paragraph (b), (c) or (d), for not more than ~~[180]~~ ***270*** days or a period that is reasonable and necessary as determined by the court after the termination of the guardianship;

(b) Except as otherwise provided in paragraph (d), for not more than 90 days after the date of the appointment of a personal representative of the estate of a deceased protected person;

(c) Except as otherwise provided in paragraph (d), for not more than 90 days after the date of the appointment of a successor trustee of a trust of the deceased protected person and upon request by the trustee; or

(d) Upon approval of the court, for more than ~~[180]~~ ***270*** days or 90 days, as applicable, if the guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate.

2. To wind up the affairs of the guardianship, the guardian shall:

(a) Pay all expenses of administration of the guardianship estate, including those incurred in winding up the affairs of the guardianship.

(b) Complete the performance of any contractual obligations incurred by the guardianship estate.

(c) With prior approval of the court, continue any activity that:

(1) The guardian believes is appropriate and necessary; or

(2) Was commenced before the termination of the guardianship.

(d) If the guardianship is terminated for a reason other than the death of the protected person, examine and allow and pay, or reject, all claims presented to the guardian prior to the termination of the guardianship for obligations incurred prior to the termination.

3. If the assets are transferred to a personal representative or a successor trustee as provided for in paragraphs (b) and (c) of subsection 1, the court may authorize the guardian to retain sufficient assets to pay any anticipated expenses and taxes of the guardianship estate.