

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

MARCH 13, 2015

JOINT SPONSORS: ASSEMBLYMEN STEWART, NELSON,
SILBERKRAUS; 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; providing an exception to the residency requirements for certain guardians under certain circumstances; revising requirements governing eligibility to utilize a public guardian; revising provisions concerning attorneys retained by a public guardian; revising provisions concerning reimbursement by a public guardian to the county for expenses relating to a ward; 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 coguardian 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 2 of this bill allow the court to appoint a nonresident as a guardian for an adult ward under certain circumstances. **Section 1** also requires the court to give preference in appointing a guardian for an adult ward to the following



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

20 In selecting a guardian, **section 1** does not allow the court to give preference to
21 a nominated person or relative who is a resident over a nominated person or relative
22 who is a nonresident if the court determines that the nonresident would be a more
23 qualified and suitable guardian and the adult would receive continuing care and
24 supervision under the guardianship of the nonresident. If the court selects a
25 nonresident guardian, **section 1** requires the court to order the nonresident guardian
26 to designate a registered agent in this State.

27 Under existing law, the board of county commissioners of each county must
28 establish the office of public guardian to serve as the guardian for certain wards.
29 (NRS 253.150-253.250) During the 74th Session of the Legislature in 2007, the
30 Legislature passed Senate Bill No. 157 (S.B. 157), which made certain changes to
31 the provisions governing the appointment and duties of public guardians. (Chapter
32 467, Statutes of Nevada 2007, p. 2485) **Sections 3-6** of this bill reenact certain
33 provisions governing public guardians that were removed by S.B. 157.

34 Specifically, existing law provides that a ward is eligible to have a public
35 guardian appointed as his or her permanent or general individual guardian if: (1)
36 there is no relative or friend able and willing to be appointed as a guardian for the
37 ward; or (2) the court removes a private professional guardian previously appointed
38 for the ward. (NRS 253.200) **Section 3** of this bill reenacts a provision removed by
39 S.B. 157 which provides that a ward is also eligible to have a public guardian
40 appointed if the ward is unable to pay for a private guardian.

41 Existing law authorizes a public guardian to employ an attorney to assist the
42 public guardian when necessary in the proper administration of a guardianship, and
43 it also authorizes, but does not require, a public guardian to rotate this employment
44 among the attorneys practicing in the county who are qualified and willing to
45 accept such employment. (NRS 253.215) **Section 4** of this bill reenacts a provision
46 removed by S.B. 157 which requires a public guardian to rotate this employment
47 among the attorneys practicing in the county who are qualified and willing to
48 accept such employment.

49 Existing law provides that the reasonable value of a public guardian's services
50 rendered without cost to a ward must be allowed as a claim against the estate of the
51 ward upon the approval of the court while the ward is still living. (NRS 253.240)
52 Existing law also allows a county to advance to a public guardian the necessary
53 expenses incurred by the public guardian during a guardianship, and if a county
54 provides such an advance, the public guardian must reimburse the county from the
55 assets of the ward's estate as soon as the assets become available while the ward is
56 still living. (NRS 253.243) **Sections 5 and 6** of this bill reenact a provision
57 removed by S.B. 157 which requires a public guardian to wait until after the ward's
58 death to reimburse the county from the assets of the ward's estate.



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 a new section to read as follows:

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

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

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

12 2. *In determining whether a nominated person or relative is*
13 *qualified and suitable to be appointed as guardian for an adult,*
14 *the court shall consider, without limitation:*

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

18 (b) *Whether the nominated person or relative has engaged in*
19 *the habitual use of alcohol or any controlled substance during the*
20 *previous 6 months, except the use of marijuana in accordance*
21 *with the provisions of chapter 453A of NRS; and*

22 (c) *Whether the nominated person or relative has been*
23 *convicted in this State or any other jurisdiction of a crime of moral*
24 *turpitude, a crime involving domestic violence, a crime involving*
25 *the exploitation of a child or a crime against an older person or a*
26 *vulnerable person.*

27 3. *If the court finds that two or more nominated persons are*
28 *qualified and suitable to be appointed as guardian for an adult,*
29 *the court shall give preference among them in the following order*
30 *of preference:*

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

35 (b) *A person whom the adult requested for the appointment as*
36 *guardian for the adult in a written instrument that is not part of*
37 *the adult's established estate plan and was executed by the adult*
38 *while competent, unless such a person presents clear and*
39 *convincing evidence of extraordinary circumstances that he or she*
40 *is more qualified and suitable to serve as guardian for the adult*
41 *than a person described in paragraph (a).*



1 4. Subject to the preferences set forth in subsections 1 and 3,
2 the court shall appoint as guardian the qualified person who is
3 most suitable and is willing to serve. In determining who is most
4 suitable, the court shall give consideration, among other factors,
5 to:

6 (a) Any nomination or request for the appointment as
7 guardian by the adult.

8 (b) Any nomination or request for the appointment as
9 guardian by a relative.

10 (c) The relationship by blood, adoption, marriage or domestic
11 partnership of the proposed guardian to the adult. In considering
12 preferences of appointment, the court may consider relatives of the
13 half blood equally with those of the whole blood. The court may
14 consider any relative in the following order of preference:

15 (1) A spouse or domestic partner.

16 (2) A child.

17 (3) A parent.

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

21 (5) A sibling.

22 (6) A grandparent or grandchild.

23 (7) An uncle, aunt, niece, nephew or cousin.

24 (8) Any other person recognized to be in a familial
25 relationship with the adult.

26 (d) Any recommendation made by a master of the court or
27 special master pursuant to NRS 159.0615.

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

32 5. The court may appoint as guardian a nominated person or
33 relative who does not satisfy the residency requirement set forth in
34 subsection 5 of NRS 159.059. The court shall not give preference
35 to a resident of this State over a nonresident if the court
36 determines that:

37 (a) The nonresident is more qualified and suitable to serve as
38 guardian; and

39 (b) The distance from the proposed guardian's place of
40 residence and the adult's place of residence will not affect the
41 quality of the guardianship or the ability of the proposed guardian
42 to make decisions and respond quickly to the needs of the adult
43 because:

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



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

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

6 6. *If the court appoints a nonresident as guardian to the*
7 *adult:*

8 (a) *The jurisdictional requirements of NRS 159.1991 to*
9 *159.2029, inclusive, must be met;*

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

13 (c) *The court may require the guardian to complete any*
14 *available training concerning guardianships pursuant to NRS*
15 *159.0592, in this State or in the state of residence of the guardian,*
16 *regarding:*

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

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

22 (3) *The rights of the adult;*

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

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

25 7. *If the court finds that there is no suitable nominated*
26 *person or relative to appoint as guardian, the court may appoint as*
27 *guardian:*

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

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

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

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

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

40 8. *As used in this section:*

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

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

45 (c) *"Domestic partnership" means:*



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

7 (d) *“Nominated person” means a person, whether or not a*
8 *relative, whom an adult:*

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

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

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

20 **Sec. 2.** NRS 159.059 is hereby amended to read as follows:

21 159.059 Except as otherwise provided in NRS 159.0595, any
22 qualified person or entity that the court finds suitable may serve as a
23 guardian. A person is not qualified to serve as a guardian who:

24 1. Is an incompetent.

25 2. Is a minor.

26 3. Has been convicted of a felony, unless the court determines
27 that such conviction should not disqualify the person from serving
28 as the guardian of the ward.

29 4. Has been suspended for misconduct or disbarred from:

30 (a) The practice of law;

31 (b) The practice of accounting; or

32 (c) Any other profession which:

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

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

37 5. ~~Has~~ *Except as otherwise provided in section 1 of this act, is*
38 *a nonresident of this State and:*

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

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

43 6. Has been judicially determined, by clear and convincing
44 evidence, to have committed abuse, neglect or exploitation of a
45 child, spouse, parent or other adult, unless the court finds that it is in



1 the best interests of the ward to appoint the person as the guardian of
2 the ward.

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

4 253.200 1. A resident of Nevada is eligible to have the public
5 guardian of the county in which he or she resides appointed as his or
6 her temporary individual guardian pursuant to NRS 159.0523
7 or 159.0525.

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

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

13 (b) *The proposed ward lacks sufficient assets to provide the*
14 *requisite compensation to a private guardian; or*

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

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

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

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

28

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

33

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

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



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

4 9. For the purposes of this section:

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

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

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

14 **Sec. 4.** NRS 253.215 is hereby amended to read as follows:

15 253.215 1. When necessary for the proper administration of a
16 guardianship, a public guardian may:

17 (a) Retain an attorney to assist him or her if the attorney
18 practices law in the county and is qualified by experience and
19 willing to serve ~~[or]~~ *and, if the public guardian retains an attorney*
20 *for this purpose, the public guardian shall, in successive*
21 *guardianships, rotate [this] his or her employment of an attorney*
22 among attorneys who practice law in the county and who are
23 qualified by experience and willing to serve; or

24 (b) Upon approval of the board of county commissioners, obtain
25 assistance from the office of the district attorney of the county.

26 2. Any attorney's fee must be paid from the assets of the ward.

27 **Sec. 5.** NRS 253.240 is hereby amended to read as follows:

28 253.240 1. The reasonable value of a public guardian's
29 services rendered without cost to a ward ~~[shall]~~ *must* be allowed as
30 a claim against the estate of the ward *only* upon the ~~[approval of the~~
31 ~~court.] death of the ward.~~

32 2. Money received in payment of a claim against the estate of
33 the ward ~~[shall]~~ *must* be deposited by the public guardian to the
34 credit of the county general fund or any other county fund, as
35 determined by the board of county commissioners.

36 **Sec. 6.** NRS 253.243 is hereby amended to read as follows:

37 253.243 1. A public guardian may file with the board of
38 county commissioners a request for an advance of money to pay
39 necessary expenses incurred, or to be incurred, by the public
40 guardian during a guardianship. The board may approve or deny the
41 request. If the board approves the request, the board shall determine
42 the amount to be advanced and advance that amount to the public
43 guardian.

44 2. The board of county commissioners of any county may
45 establish a revolving fund to be used to provide advances to the



1 public guardian pursuant to subsection 1. If the board has
2 established a revolving fund pursuant to this subsection, the board
3 shall pay any advance approved pursuant to subsection 1 from the
4 revolving fund to the extent that there is sufficient money in the
5 revolving fund to pay the advance. After the money in the revolving
6 fund has been exhausted, the board shall pay any advance, or any
7 part of an advance, approved by the board from the general fund of
8 the county. If the board has not established a revolving fund
9 pursuant to this subsection, the board shall pay any advance
10 approved pursuant to subsection 1 from the general fund of the
11 county.

12 3. The public guardian ~~must~~ *shall* reimburse the county for
13 any advance provided pursuant to subsection 1 from the assets of the
14 estate of the ward as soon as, and to the extent that, the assets
15 become available ~~to~~ *upon the death of the ward*. If the board of
16 county commissioners has established a revolving fund pursuant to
17 subsection 2, the board shall deposit in the revolving fund the
18 money obtained from a reimbursement provided pursuant to this
19 subsection. If the board has not established a revolving fund
20 pursuant to subsection 2, the board shall deposit in the general fund
21 of the county the money obtained from a reimbursement provided
22 pursuant to this subsection.

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

