

BILL ANALYSIS

Senate Research Center

H.B. 1849
By: Sanford et al. (Paxton)
State Affairs
5/11/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The enforceability of limitations imposed under a court order or divorce decree after the death of a party to the order or decree has come into question. It has been suggested that any such limitations, such as requiring a parent or guardian to pass a drug test, would not be upheld under current law if the primary caregiver or conservator of the child who requested those limitations were to die. Concerns have been raised regarding the safety of subsequently placing a child in the custody of the parent who had been subject to those limitations without requiring that parent to follow the stipulations laid out in the order or decree. H.B. 1849 seeks to protect a child's best interests by ensuring these types of divorce decrees and related orders are revisited in court upon the death of the conservator and by authorizing a judge to modify a decree or order as the judge deems necessary.

H.B. 1849 amends current law relating to the modification of an order establishing the conservatorship or possession of or access to a child after a conservator's death.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 156, Family Code, by adding Section 156.106, as follows:

Sec. 156.106. MODIFICATION OF ORDER BASED ON DEATH OF CONSERVATOR. (a) Provides that the death of a person who is a conservator of a child is a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator or that sets the terms and conditions of conservatorship or for the possession of or access to the child.

(b) Requires the court, before modifying an order under Section 156.101 (Grounds for Modification of Order Establishing Conservatorship or Possession and Access) based on a material and substantial change of circumstances described by Subsection (a), to consider any term or condition of the order or portion of a decree that denies possession of the child to a parent or imposes restrictions or limitations on the parent's right to possession of or access to the child. Requires the court to include those restrictions or limitations in a modification of the order if the court finds that the restrictions or limitations continue to be in the best interest of the child.

SECTION 2. Provides that the change in law made by this Act apply to a suit for modification that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

SECTION 3. Effective date: September 1, 2021.