

By: Cook, Smith

H.B. No. 2948

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the modification of a possession order and temporary  
3 possession of a child when a conservator of the child is  
4 incapacitated.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter B, Chapter 156, Family Code, is  
7 amended by adding Section 156.107 to read as follows:

8 Sec. 156.107. MODIFICATION ON INCAPACITATION OF  
9 CONSERVATOR; TEMPORARY POSSESSION OF CHILD. (a) The temporary or  
10 permanent incapacitation of a conservator of a child is a material  
11 and substantial change in circumstances sufficient to justify a  
12 temporary order and modification of an existing court order or  
13 portion of a decree that provides for the appointment of a  
14 conservator or that sets the terms and conditions of  
15 conservatorship or for the possession of or access to the child.  
16 For purposes of this section, a conservator is incapacitated if the  
17 conservator experiences a physical condition, mental condition, or  
18 period of incarceration that renders the conservator substantially  
19 unable to:

- 20 (1) provide food, clothing, or shelter to the child;  
21 (2) care for the child's physical health; or  
22 (3) care for the conservator's physical health.

23 (b) Except as provided by Subsection (c), if a conservator  
24 of a child becomes incapacitated, the child's other conservator, if

1 another conservator has been appointed for the child, is entitled  
2 to exercise all of the incapacitated conservator's periods of  
3 possession of the child, immediately following the onset of the  
4 incapacitation and continuing until the earlier of the date:

5 (1) the incapacitated conservator is again capable of  
6 caring for the child; or

7 (2) the court, due to the material and substantial  
8 change in circumstances caused by the incapacitation, renders an  
9 order under this chapter modifying the appointment of the child's  
10 conservators or the terms and conditions of conservatorship or for  
11 the possession of or access to the child.

12 (c) A possessory conservator of a child is not entitled to  
13 temporary possession under Subsection (b) if the existing order or  
14 portion of a decree sought to be modified denied possession of the  
15 child by the possessory conservator or imposed restrictions or  
16 limitations on the possessory conservator's right to possession of  
17 or access to the child.

18 (d) Nothing in this section may be construed to prevent a  
19 party with standing to file suit under this title from filing for  
20 modification under this chapter in response to a material and  
21 substantial change in circumstances.

22 SECTION 2. Section 156.107, Family Code, as added by this  
23 Act, applies only in regard to a conservator who becomes  
24 incapacitated on or after the effective date of this Act.

25 SECTION 3. This Act takes effect September 1, 2023.