

BILL ANALYSIS

Senate Research Center
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H.B. 1352
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In a typical scenario, a title to a property is transferred to heirs immediately upon the administration of a decedent's estate, and the administration of the estate is generally completed upon the payments of debts; the process rarely takes a long time. However, there are circumstances when the administrator of the estate prefers to operate that business in the name of the estate because there is a business involved. Administrators do not have the powers necessary to continue the operation of a business in the name of the estate while having an executor or other representative manage the business in that name.

Currently, the Probate Code provides that the title to the property of a decedent vests in the heir immediately upon death. The heir is required to pay the debts incurred due to the administration of the decedent's estate, but the payments of these administrative debts generally take place over an indeterminate number of years.

H.B. 1352 authorizes a court to order the personal representative of an estate to operate a business that is part of the estate and to grant the personal representative the powers to operate the business that the court determines are appropriate under certain circumstances and upon making certain considerations.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 238, Texas Probate Code, as follows:

Sec. 238. OPERATION OF FARM, RANCH, FACTORY, OR OTHER BUSINESS.

(a) Defines "business."

(b) Authorizes a court, after notice to all interested persons and a hearing, to order the personal representative of an estate to operate a business that is part of the estate and to grant the personal representative the powers to operate the business that the court determines are appropriate, after considering the factors listed in Subsection (f) of this section, if the disposition of the business has not been specifically directed by the decedent's will, it is not necessary to sell the business at once for the payment of debts or other lawful purposes, and the court determines that the operation of the business by the personal representative is in the best interest of the estate. Deletes existing text regarding the conditions under which a court is authorized to order the personal representative of an estate to operate a business that is part of the estate and to grant the personal representative the powers to operate the business that the court determines are appropriate.

(c) Provides that a personal representative who is granted the power to operate a business in an order entered under this section has the powers granted under Section 234(b)(Powers to be Exercised Without Court Order) of this code, regardless of whether the order specifies that the personal representative has those powers, unless the order specifically provides that the personal representative does not have one or more of the powers listed in that section.

(d) Authorizes an order entered under this section, in addition to the powers granted to the personal representative under Section 234(b) of this code, subject to any specific limitation on those powers in accordance with Subsection (c) of this section, to grant the personal representative one or more of certain powers.

(e) Provides that if the order entered under this section gives the personal representative the power to purchase, sell, lease, or otherwise encumber real or personal property, the purchase, sale, lease, or encumbrance is governed by the terms of the order; and the personal representative is not required to comply with any other provision of this code regarding the purchase, sale, lease, or encumbrance, including provisions requiring citation or notice.

(f) Requires the court, in determining which powers to grant a personal representative in an order entered under this section, to consider certain factors.

(g) Provides that a personal representative who operates a business under an order entered under this section has the same fiduciary duties as a personal representative who does not operate a business that is part of an estate. Requires the personal representative, in operating the business, to consider the condition of the estate and the business, the necessity that may exist for the future sale of the sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate, the effect of the order on the speedy settlement of the estate, and the best interests of the estate; and to report to the court with the respect to the operation and condition of the business as part of the accounts required by Parts 11 (Annual Accounts and Other Exhibits) and 12 (Final Settlement, Accounting, and Discharge), Chapter VIII, of this code, unless the court orders the reports regarding the business to be made more frequently or in a different manner or form.

(h) Requires the personal representative, before purchasing, selling, leasing, or otherwise encumbering any real property of the business in accordance with an order entered under this section, to file a notice in the real property records of the county in which the real property is located. Requires the notice to state certain information.

(i) Authorizes a third party who deals in good faith with a personal representative with respect to the transaction, for purposes of determining a personal representative's powers with respect to a purchase, sale, lease, or other encumbrance of real property of a business that is part of an estate, to rely on the notice under Subsection (h) of this section and an order that is maintained by the clerk of the court in which the estate is pending. Deletes existing text relating to requiring the court to consider the conditions of the estate, and certain other factors.

SECTION 2. Provides that the change in law made by this Act applies to the estate of a decedent that is pending on or after the effective date of the Act, regardless of the decedent's date of death.

SECTION 3. Effective date: September 1, 2007.