

## **BILL ANALYSIS**

C.S.H.B. 1352  
By: Paxton  
Judiciary  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

This bill is intended to authorize a practice that is encountered where the heirs of a decedent wish to continue to operate a farm, ranch, factory, or other business in the name of the estate and have an executor or other representative manage the business in that name. The Probate Code currently provides that title to property of a decedent vests in the heir immediately upon death. The heir only needs to pay the debts incurred due to the administration of the decedent's estate. Payment of these administrative debts of an estate generally take place over an indeterminate number of years. In fact, although many attorneys do not close estates, as a practical matter most estates would be considered closed within 1-2 years after the death of the decedent because of the delay in paying the administrative debts and the court not being allowed to appoint a representative to operate the estate. HB 1352 allows the court to authorize a personal representative to operate the business on behalf of the family.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

The bill would amend and establish provisions regarding the operation by a personal representative of a business which is part of a decedent's estate and which has not been disposed of by a will. The amended Section 238, Probate Code, would permit the court to grant the personal representative the power to operate the business and to incur debt, hire and fire employees, to purchase and sell property in the ordinary course of business, and any other power the court finds necessary. The court is directed to consider the future sale of the business and its property as well as the current condition of the business and the effect on the timing of the settlement of the estate when issuing the order. The same considerations are imposed on the personal representative, who is charged with a fiduciary duty with respect to the operation of the business. Provisions are also included with respect to reports and procedures for sale of business property.

### **EFFECTIVE DATE**

September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute deletes the grant to the personal representative of the powers of a trustee under the Texas Trust Code, which is provided for in the original. The substitute also includes provisions specifying matters which the court and the personal representative must consider with respect to the order and the operation of the business which are not found in the original. The substitute contains provisions not found in the original stating that the order permitting sale of real or personal property controls over other provisions of the Probate Code, including provisions regarding citation and notice. The substitute also includes provisions not in the original for notices and filings be made in the real property records of the appropriate county whenever purchase, sale, lease or other encumbrance is made on real property pursuant to an order permitting a personal representative to operate the business of an estate.