

By: Paxton

H.B. No. 1352

Substitute the following for H.B. No. 1352:

By: Hughes

C.S.H.B. No. 1352

A BILL TO BE ENTITLED

AN ACT

relating to the operation of a farm, ranch, factory, or other business by the personal representative of a decedent's estate.

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

SECTION 1. Section 238, Texas Probate Code, is amended to read as follows:

Sec. 238. OPERATION OF FARM, RANCH, FACTORY, OR OTHER BUSINESS. (a) In this section, "business" includes a farm, ranch, or factory.

(b) A court, after notice to all interested persons and a hearing, may order the personal representative of an estate to operate a business that is part of the estate and may 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:

(1) [~~If the estate owns a farm, ranch, factory, or other business,~~] the disposition of the business [~~which~~] has not been specifically directed by the decedent's will;

(2) it is not necessary to sell the business [~~, and if the same be not required to be sold~~] at once for the payment of debts or other lawful purposes; and

(3) the court determines that the operation of the business by the personal representative is in [~~, the representative, upon order of the court, shall carry on the operation of such farm,~~

1 ~~ranch, factory, or other business, or cause the same to be done, or~~
2 ~~rent the same, as shall appear to be for]~~ the best interest of the
3 estate.

4 (c) A personal representative who is granted the power to
5 operate a business in an order entered under this section has the
6 powers granted under Section 234(b) of this code, regardless of
7 whether the order specifies that the personal representative has
8 those powers, unless the order specifically provides that the
9 personal representative does not have one or more of the powers
10 listed in that section.

11 (d) In addition to the powers granted to the personal
12 representative under Section 234(b) of this code, subject to any
13 specific limitation on those powers in accordance with Subsection
14 (c) of this section, an order entered under this section may grant
15 the personal representative one or more of the following powers:

16 (1) the power to hire, pay, and terminate the
17 employment of employees of the business;

18 (2) the power to incur debt on behalf of the business,
19 including debt secured by liens against assets of the business or
20 estate, if permitted or directed in the order;

21 (3) the power to purchase and sell property in the
22 ordinary course of the operation of the business, including the
23 power to purchase and sell real property if the court finds that the
24 principal purpose of the business is the purchasing and selling of
25 real property and the order states that finding;

26 (4) the power to enter into a lease or contract, the
27 term of which may extend beyond the settlement of the estate, but

1 only to the extent granting that power appears to be consistent with
2 the speedy settlement of the estate; and

3 (5) any other power the court finds is necessary with
4 respect to the operation of the business.

5 (e) If the order entered under this section gives the
6 personal representative the power to purchase, sell, lease, or
7 otherwise encumber real or personal property:

8 (1) the purchase, sale, lease, or encumbrance is
9 governed by the terms of the order; and

10 (2) the personal representative is not required to
11 comply with any other provision of this code regarding the
12 purchase, sale, lease, or encumbrance, including provisions
13 requiring citation or notice.

14 (f) In determining which powers to grant a personal
15 representative in an order entered under this section, the court
16 shall consider the following factors:

17 (1) the condition of the estate and the business;

18 (2) the necessity that may exist for the future sale of
19 the business or of business property to provide for payment of debts
20 or claims against the estate or other lawful expenditures with
21 respect to the estate;

22 (3) the effect of the order on the speedy settlement of
23 the estate; and

24 (4) the best interests of the estate.

25 (g) A personal representative who operates a business under
26 an order entered under this section has the same fiduciary duties as
27 a personal representative who does not operate a business that is

1 part of an estate. The personal representative shall:

2 (1) in operating the business, consider:

3 (A) the condition of the estate and the business;

4 (B) the necessity that may exist for the future
5 sale of the business or of business property to provide for payment
6 of debts or claims against the estate or other lawful expenditures
7 with respect to the estate;

8 (C) the effect of the order on the speedy
9 settlement of the estate; and

10 (D) the best interests of the estate; and

11 (2) report to the court with respect to the operation
12 and condition of the business as part of the accounts required by
13 Parts 11 and 12, Chapter VIII, of this code, unless the court orders
14 the reports regarding the business to be made more frequently or in
15 a different manner or form.

16 (h) Before purchasing, selling, leasing, or otherwise
17 encumbering any real property of the business in accordance with an
18 order entered under this section, the personal representative shall
19 file a notice in the real property records of the county in which
20 the real property is located. The notice must state:

21 (1) the name of the decedent;

22 (2) the county of the court in which the decedent's
23 estate is pending;

24 (3) the cause number assigned to the pending estate;

25 (4) that one or more orders have been entered under
26 this section; and

27 (5) a description of the property that is the subject

1 of the purchase, sale, lease, or other encumbrance.

2 (i) For purposes of determining a personal representative's
3 powers with respect to a purchase, sale, lease, or other
4 encumbrance of real property of a business that is part of an
5 estate, a third party who deals in good faith with a personal
6 representative with respect to the transaction may rely on the
7 notice under Subsection (h) of this section and an order that is
8 entered under this section and filed as part of the estate records
9 maintained by the clerk of the court in which the estate is pending.

10 ~~[In deciding, the court shall consider the condition of the estate,~~
11 ~~and the necessity that may exist for future sale of such property or~~
12 ~~business for the payment of debts, claims, or other lawful~~
13 ~~expenditures, and shall not extend the time of renting any of the~~
14 ~~property beyond what appears consistent with the speedy settlement~~
15 ~~of the estate of a deceased person or the settlement of his estate.]~~

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

19 SECTION 3. This Act takes effect September 1, 2007.