

1-1 By: Paxton (Senate Sponsor - Harris) H.B. No. 1352
1-2 (In the Senate - Received from the House May 3, 2007;
1-3 May 7, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 17, 2007, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 17, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the operation of a farm, ranch, factory, or other
1-9 business by the personal representative of a decedent's estate.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 238, Texas Probate Code, is amended to
1-12 read as follows:

1-13 Sec. 238. OPERATION OF FARM, RANCH, FACTORY, OR OTHER
1-14 BUSINESS. (a) In this section, "business" includes a farm, ranch,
1-15 or factory.

1-16 (b) A court, after notice to all interested persons and a
1-17 hearing, may order the personal representative of an estate to
1-18 operate a business that is part of the estate and may grant the
1-19 personal representative the powers to operate the business that the
1-20 court determines are appropriate, after considering the factors
1-21 listed in Subsection (f) of this section, if:

1-22 (1) [~~If the estate owns a farm, ranch, factory, or~~
1-23 ~~other business,~~] the disposition of the business [~~which~~] has not
1-24 been specifically directed by the decedent's will;

1-25 (2) it is not necessary to sell the business [~~, and if~~
1-26 ~~the same be not required to be sold]~~ at once for the payment of debts
1-27 or other lawful purposes; and

1-28 (3) the court determines that the operation of the
1-29 business by the personal representative is in [~~, the representative,~~
1-30 ~~upon order of the court, shall carry on the operation of such farm,~~
1-31 ~~ranch, factory, or other business, or cause the same to be done, or~~
1-32 ~~rent the same, as shall appear to be for]~~ the best interest of the
1-33 estate.

1-34 (c) A personal representative who is granted the power to
1-35 operate a business in an order entered under this section has the
1-36 powers granted under Section 234(b) of this code, regardless of
1-37 whether the order specifies that the personal representative has
1-38 those powers, unless the order specifically provides that the
1-39 personal representative does not have one or more of the powers
1-40 listed in that section.

1-41 (d) In addition to the powers granted to the personal
1-42 representative under Section 234(b) of this code, subject to any
1-43 specific limitation on those powers in accordance with Subsection
1-44 (c) of this section, an order entered under this section may grant
1-45 the personal representative one or more of the following powers:

1-46 (1) the power to hire, pay, and terminate the
1-47 employment of employees of the business;

1-48 (2) the power to incur debt on behalf of the business,
1-49 including debt secured by liens against assets of the business or
1-50 estate, if permitted or directed in the order;

1-51 (3) the power to purchase and sell property in the
1-52 ordinary course of the operation of the business, including the
1-53 power to purchase and sell real property if the court finds that the
1-54 principal purpose of the business is the purchasing and selling of
1-55 real property and the order states that finding;

1-56 (4) the power to enter into a lease or contract, the
1-57 term of which may extend beyond the settlement of the estate, but
1-58 only to the extent granting that power appears to be consistent with
1-59 the speedy settlement of the estate; and

1-60 (5) any other power the court finds is necessary with
1-61 respect to the operation of the business.

1-62 (e) If the order entered under this section gives the
1-63 personal representative the power to purchase, sell, lease, or
1-64 otherwise encumber real or personal property:

2-1 (1) the purchase, sale, lease, or encumbrance is
 2-2 governed by the terms of the order; and

2-3 (2) the personal representative is not required to
 2-4 comply with any other provision of this code regarding the
 2-5 purchase, sale, lease, or encumbrance, including provisions
 2-6 requiring citation or notice.

2-7 (f) In determining which powers to grant a personal
 2-8 representative in an order entered under this section, the court
 2-9 shall consider the following factors:

2-10 (1) the condition of the estate and the business;

2-11 (2) the necessity that may exist for the future sale of
 2-12 the business or of business property to provide for payment of debts
 2-13 or claims against the estate or other lawful expenditures with
 2-14 respect to the estate;

2-15 (3) the effect of the order on the speedy settlement of
 2-16 the estate; and

2-17 (4) the best interests of the estate.

2-18 (g) A personal representative who operates a business under
 2-19 an order entered under this section has the same fiduciary duties as
 2-20 a personal representative who does not operate a business that is
 2-21 part of an estate. The personal representative shall:

2-22 (1) in operating the business, consider:

2-23 (A) the condition of the estate and the business;

2-24 (B) the necessity that may exist for the future
 2-25 sale of the business or of business property to provide for payment
 2-26 of debts or claims against the estate or other lawful expenditures
 2-27 with respect to the estate;

2-28 (C) the effect of the order on the speedy
 2-29 settlement of the estate; and

2-30 (D) the best interests of the estate; and

2-31 (2) report to the court with respect to the operation
 2-32 and condition of the business as part of the accounts required by
 2-33 Parts 11 and 12, Chapter VIII, of this code, unless the court orders
 2-34 the reports regarding the business to be made more frequently or in
 2-35 a different manner or form.

2-36 (h) Before purchasing, selling, leasing, or otherwise
 2-37 encumbering any real property of the business in accordance with an
 2-38 order entered under this section, the personal representative shall
 2-39 file a notice in the real property records of the county in which
 2-40 the real property is located. The notice must state:

2-41 (1) the name of the decedent;

2-42 (2) the county of the court in which the decedent's
 2-43 estate is pending;

2-44 (3) the cause number assigned to the pending estate;

2-45 (4) that one or more orders have been entered under
 2-46 this section; and

2-47 (5) a description of the property that is the subject
 2-48 of the purchase, sale, lease, or other encumbrance.

2-49 (i) For purposes of determining a personal representative's
 2-50 powers with respect to a purchase, sale, lease, or other
 2-51 encumbrance of real property of a business that is part of an
 2-52 estate, a third party who deals in good faith with a personal
 2-53 representative with respect to the transaction may rely on the
 2-54 notice under Subsection (h) of this section and an order that is
 2-55 entered under this section and filed as part of the estate records
 2-56 maintained by the clerk of the court in which the estate is pending.

2-57 [In deciding, the court shall consider the condition of the estate,
 2-58 and the necessity that may exist for future sale of such property or
 2-59 business for the payment of debts, claims, or other lawful
 2-60 expenditures, and shall not extend the time of renting any of the
 2-61 property beyond what appears consistent with the speedy settlement
 2-62 of the estate of a deceased person or the settlement of his estate.]

2-63 SECTION 2. The change in law made by this Act applies to the
 2-64 estate of a decedent that is pending on or after the effective date
 2-65 of this Act, regardless of the decedent's date of death.

2-66 SECTION 3. This Act takes effect September 1, 2007.

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