

## **BILL ANALYSIS**

Senate Research Center

S.B. 1639  
By: Duncan  
Jurisprudence  
4-14-97  
Committee Report (Amended)

### **DIGEST**

Currently, a cotton ginner is provided a lien under Section 9.310, Business and Commerce Code. This conclusion is based upon a court decision involving a certain set of facts. The issue of a cotton ginner being able to claim a lien under Section 9.310 has been raised in subsequent cases. The industry is moving towards the use of electronic warehouse receipts, and new farm legislation may change the marketing practices of today. Both situations could impact future court decisions on whether or not a cotton ginner has a lien under Section 9.310. This bill would statutorily establish a ginner's lien and set forth related guidelines under Section 70.003, Property Code.

### **PURPOSE**

As proposed, S.B. 1639 establish a lien for the processing or harvesting of cotton under Section 70.003, Property Code.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading of Section 70.003, Property Code, as follows:

Sec. 70.003. New heading: STABLE KEEPER'S, GARAGE MAN'S, PASTURER'S, AND COTTON GINNER'S LIENS.

SECTION 2. Amends Section 70.003, Property Code, by adding Subsection (d), to provide that a cotton ginner to whom a cotton crop has been delivered for processing or who is to be paid for harvesting a cotton crop has a lien on the cotton processed or harvested for the amount of the charges for the processing or harvesting. Sets forth the rights of the lienholder. Requires the lienholder, under certain conditions, to request the owner to pay the unpaid charge due and to notify the owner and any other person having a lien on the cotton who has given actual notice of that lien to the lienholder under this subsection of the fact that unless payment is made by a certain date, the lienholder is entitled to sell the cotton under any procedure authorized by Section 9.504, Business and Commerce Code. Entitles the lienholder under certain conditions to sell the cotton without notice at a commercially reasonable sale. Sets forth the distribution of the proceeds of a sale under this subsection.

SECTION 3. Amends the heading of Section 70.005, Property Code, as follows:

Sec. 70.005. New heading: SALE OF PROPERTY.

SECTION 4. Amends Section 70.005(a), Property Code, to make conforming and standard recodification changes.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Emergency clause.

**SUMMARY OF COMMITTEE CHANGES**

Amendment 1

Page 1, line 22, insert "and any other person having a lien on the cotton who has given actual notice of that lien to the lienholder under this section," after "owner."

Page 1, line 24, replace "at a public sale" with "under any procedure authorized by Section 9.504 of the Texas Business and Commerce Code."

Page 2, line 5, replace "property" with "cotton."

Page 2, line 5, replace "public" with "commercially reasonable."