

115TH CONGRESS  
2D SESSION

# S. 3140

To amend the Packers and Stockyards Act, 1921, to provide for the establishment of a trust for the benefit of all unpaid cash sellers of livestock, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 26, 2018

Mr. INHOFE (for himself, Mr. DAINES, Mr. MORAN, and Mrs. FISCHER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Packers and Stockyards Act, 1921, to provide for the establishment of a trust for the benefit of all unpaid cash sellers of livestock, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing All Livestock  
5 Equitably Act of 2018” or the “SALE Act of 2018”.

1 **SEC. 2. ESTABLISHMENT OF TRUST FOR BENEFIT OF UN-**  
2 **PAID CASH SELLERS OF LIVESTOCK.**

3 Title III of the Packers and Stockyards Act, 1921  
4 (7 U.S.C. 201 et seq.), is amended by adding at the end  
5 the following:

6 **“SEC. 318. STATUTORY TRUST ESTABLISHED; DEALER.**

7 “(a) DEFINITION OF CASH SALE.—In this section,  
8 the term ‘cash sale’ means a sale in which the seller does  
9 not expressly extend credit to the buyer.

10 “(b) ESTABLISHMENT.—

11 “(1) IN GENERAL.—Except as provided in para-  
12 graphs (2) and (3), all livestock purchased by a deal-  
13 er in cash sales and all inventories of, or receivables  
14 or proceeds from, that livestock shall be held by the  
15 dealer in trust for the benefit of all unpaid cash sell-  
16 ers of that livestock until full payment has been re-  
17 ceived by those unpaid cash sellers.

18 “(2) EXEMPTION.—This section shall not apply  
19 to a dealer the amount of average annual purchases  
20 of livestock of which does not exceed \$250,000.

21 “(3) WAIVER.—

22 “(A) IN GENERAL.—A dealer and a cash  
23 seller may voluntarily waive the applicability of  
24 this section to the dealer and cash seller  
25 through a written agreement described in sub-  
26 paragraph (B) that is signed before any sale to

1           which the written agreement applies takes  
2           place.

3           “(B) WRITTEN AGREEMENT.—A written  
4           agreement referred to in subparagraph (A)  
5           shall indicate whether the written agreement  
6           applies to—

7                     “(i) 1 sale;

8                     “(ii) all sales before a specific date; or

9                     “(iii) all sales until the dealer or cash  
10           seller terminates the agreement in writing.

11           “(C) EFFECT ON PAYMENT TERMS.—A  
12           waiver under subparagraph (A) shall not affect  
13           the payment terms of the sale.

14           “(4) EFFECT OF DISHONORED INSTRU-  
15           MENTS.—For purposes of determining full payment  
16           under paragraph (1), a payment to an unpaid cash  
17           seller shall not be considered to have been made if  
18           the unpaid cash seller receives a payment instrument  
19           that is dishonored.

20           “(c) ENFORCEMENT.—If a dealer fails to perform the  
21           duties required by subsection (b), the Secretary shall take  
22           such action as is necessary—

23                     “(1) to enforce the trust, including by appoint-  
24           ing an independent trustee; and

25                     “(2) to preserve the assets of the trust.

1       “(d) PRESERVATION OF TRUST.—An unpaid cash  
 2 seller shall lose the benefit of a trust under subsection (b)  
 3 if the unpaid cash seller has not preserved the trust by—

4               “(1) providing a written notice to the applicable  
 5 dealer of the intent of the unpaid cash seller to pre-  
 6 serve the benefits of the trust; and

7               “(2) filing that notice with the Secretary—

8                       “(A) not later than 30 days after the final  
 9 date for making a payment under section 409  
 10 in the event that a payment instrument has not  
 11 been received; or

12                      “(B) not later than 15 business days after  
 13 the date on which the seller receives notice that  
 14 the payment instrument promptly presented for  
 15 payment has been dishonored.

16       “(e) NOTICE TO LIEN HOLDERS.—Not later than 15  
 17 business days after the date on which a dealer receives  
 18 notice under subsection (d)(1) with respect to a trust, the  
 19 dealer shall give notice of the intent of the unpaid cash  
 20 seller to preserve the benefits of the trust to all persons  
 21 who have recorded a security interest in, or lien on, the  
 22 livestock held in that trust.

23       “(f) PURCHASE OF LIVESTOCK SUBJECT TO  
 24 TRUST.—

1           “(1) IN GENERAL.—Notwithstanding section  
 2           1324 of the Food Security Act of 1985 (7 U.S.C.  
 3           1631), a buyer in the ordinary course that purchases  
 4           livestock that is held in trust by a dealer under sub-  
 5           section (b), including from a dealer that engages in  
 6           farming operations, shall receive good title to the  
 7           livestock free of the dealer trust—

8                   “(A) if the buyer receives the livestock in  
 9                   exchange for payment of new value; and

10                   “(B) without regard to whether—

11                           “(i) the dealer trust has been pre-  
 12                           served in accordance with this section; or

13                           “(ii) the buyer knows of the existence  
 14                           of the dealer trust.

15           “(2) PAYMENT.—Payment shall not be consid-  
 16           ered to have been made under paragraph (1)(A) if  
 17           a payment instrument given in exchange for the live-  
 18           stock is dishonored.

19           “(g) TRANSFER OF LIVESTOCK SUBJECT TO  
 20 TRUST.—A transfer of livestock that is held in trust by  
 21 a dealer under subsection (b) shall not be considered to  
 22 be for new value under subsection (f)(1)(A) if the transfer  
 23 is—

24                   “(1) in satisfaction of an antecedent debt; or

1           “(2) to a secured party pursuant to a security  
2       agreement.”.

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