

CLARIFICATION OF TREATMENT OF ELECTRONIC SALES
OF LIVESTOCK ACT OF 2016

SEPTEMBER 20, 2016.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. CONAWAY, from the Committee on Agriculture,
submitted the following

R E P O R T

[To accompany H.R. 5883]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 5883) to amend the Packers and Stockyards Act, 1921, to clarify the duties relating to services furnished in connection with the buying or selling of livestock in commerce through online, video, or other electronic methods, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Clarification of Treatment of Electronic Sales of Livestock Act of 2016”.

SEC. 2. DEFINITION OF MARKET AGENCY.

(a) IN GENERAL.—Section 301(c) of the Packers and Stockyards Act, 1921 (7 U.S.C. 201(c)) is amended—

(1) by striking “; and” at the end and inserting a period; and

(2) by adding at the end the following: “Beginning on the date of the enactment of the Clarification of Treatment of Electronic Sales of Livestock Act of 2016, such term includes any person who engages in the business of buying or selling livestock, on a commission or other fee basis, through the use of online, video, or other electronic methods when handling or providing the means to handle receivables or proceeds from such buying or selling, so long as such person’s annual average of online, video, or electronic sales of livestock, on a commission or other fee basis, exceeds \$250,000.”.

(b) TECHNICAL AMENDMENTS.—Section 301 of the Packers and Stockyards Act, 1921 (7 U.S.C. 201) is amended—

(1) in the matter preceding subsection (a), by striking “When used in this Act—” and inserting “In this Act.”;

- (2) in subsection (a), by striking the semicolon at the end and inserting a period; and
- (3) in subsection (b)—
 - (A) by striking “weighting” and inserting “weighing”; and
 - (B) by striking the semicolon at the end and inserting a period.

SEC. 3. METHODS TO TRANSFER FUNDS.

Section 409(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 228b(a)) is amended—

- (1) in the first proviso, by striking “shall wire transfer funds to the seller’s account” each place it appears and inserting “shall transfer funds for the full amount of the purchase price to the account of the seller by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary”; and
- (2) in the second proviso, by striking “or dealer shall wire transfer funds” and inserting “or dealer shall transfer funds for the full amount of the purchase price by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary”.

BRIEF EXPLANATION

The Clarification of Treatment of Electronic Sales of Livestock Act of 2016, H.R. 5883, clarifies the duties of the Secretary of Agriculture relating to services furnished in connection with the buying and selling of livestock in commerce through online, video, or other electronic methods and updates the acceptable payment methods.

PURPOSE AND NEED FOR LEGISLATION

The Packers and Stockyards Act (P&S Act or the Act) was originally enacted in 1921 to protect buyers and sellers of livestock from unfair, deceptive, and discriminatory practices. However, the law has not been thoroughly revised in decades, resulting in a few outdated provisions. H.R. 5883 updates certain provisions of the P&S Act to account for advances in technology and the avenues businesses and producers use to buy and sell livestock.

While the P&S Act currently gives the Secretary the authority to regulate any person engaged in buying or selling livestock “in commerce,” it is unclear to what extent online livestock auctions are regulated. H.R. 5883, amends the Act to clarify that the protections of the P&S Act apply to persons buying or selling livestock online or through other electronic means.

Many businesses currently selling livestock online are already voluntarily registered with the Department of Agriculture. However, to ensure that H.R. 5833 does not unintentionally burden small scale producers who rely on the internet to market their livestock, the language includes a *de minimis* provision so that only those individuals with average online sales over \$250,000 are subject the requirements of the Act.

The P&S Act currently references only two forms of payment methods acceptable under the Act’s prompt payment requirements for sales transactions: checks and wire transfers. To address this outdated requirement, H.R. 5883 updates the acceptable payment methods to include the electronic transfer of funds and gives the Secretary the flexibility to approve other new methods of payment as deemed appropriate.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1. Short title

Section 1 of the bill designates the title of the bill as the “Clarification of Treatment of Electronic Sales of Livestock Act of 2016.”

Section 2. Definition of market agency

Subsection (a) of section 2 amends the current definition of “market agency” in the P&S Act to clarify that a person who buys or sells livestock on a commission or other fee basis online, or through video or other electronic methods, is considered to be a market agency for the purposes of the P&S Act. However, subsection (a) makes clear that the term does not include a person whose annual average online, video, or other electronic sales of livestock on a commission or other fee basis is less than \$250,000.

Subsection (b) is a technical amendment.

Section 3. Methods to transfer funds

Section 3 amends section 409 of the P&S Act and updates it to allow for electronic funds transfer and other expeditious payment methods, as determined appropriate by the Secretary, as options for individuals covered by the P&S Act to meet prompt payment requirements.

COMMITTEE CONSIDERATION

I. HEARINGS

On May 24, 2016, the Subcommittee on Livestock and Foreign Agriculture held a hearing to review the economic state of the livestock industry. The hearing record includes testimony from the Livestock Marketing Association, highlighting the need to update the Packers and Stockyards Act to account for modern technologies and containing specific recommendations similar to those ultimately included in H.R. 5883.

II. FULL COMMITTEE

The Committee on Agriculture met, pursuant to notice, with a quorum present, on September 14, 2016, to consider H.R. 5883, the Technical and Clarifying Amendments to the Packers and Stockyards Act of 2016.

H.R. 5883 was placed before the Committee for consideration. Without objection, a first reading of the bill was waived and it was open to amendment at any point. Chairman Conaway offered an Amendment in the Nature of a Substitute to H.R. 5883. Without objection, the Amendment in the Nature of a Substitute was considered as original text for purposes of amendment.

Chairman Conaway, Mr. Peterson, and Mr. Rouzer were recognized for statements. There being no other amendments, Mr. Peterson was recognized to offer a motion that the Amendment in the Nature of a Substitute to H.R. 5883 be approved. The Amendment in the Nature of a Substitute was adopted by voice vote. Mr. Peterson was then recognized to offer a motion that the bill H.R. 5883 be reported, as amended, favorably to the House with the recommendation that it do pass. The motion was subsequently approved by voice vote.

At the conclusion of the meeting, Chairman Conaway advised Members, that pursuant to the rules of the House of Representatives, Members had until September 16, 2016 to file any supplemental, minority, additional, or dissenting views with the Committee. Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee. Chairman Conaway thanked all the Members and adjourned the meeting.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, H.R. 5883 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 16, 2016.

Hon. K. MICHAEL CONAWAY,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5883, the Clarification of Treatment of Electronic Sales of Livestock Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Tiffany Arthur.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5883—Clarification of Treatment of Electronic Sales of Livestock Act of 2016

H.R. 5883 would amend the Packers and Stockyards Act of 1921 to include livestock sales conducted through electronic communications. Specifically, the legislation updates the definition of a market agency to include persons who buy or sell livestock through electronic methods if such person's average annual livestock sales exceed \$250,000. The legislation also would permit the use of elec-

tronic funds transfers or any other exchange methods the Secretary of Agriculture determines appropriate to complete livestock sales.

Based on information from the Department of Agriculture, CBO estimates that the cost to implement the provisions of the bill would be insignificant; such spending would be subject to the availability of appropriated funds. Enacting H.R. 5883 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5883 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

The bill would impose private-sector mandates, as defined in UMRA, on some operators of online and video livestock auctions. Under the bill, those operators would need to comply with provisions of the Packers and Stockyards Act such as requirements for bonding and for prompt payment to sellers. However, information from industry sources about current business practices indicates that most operators of online and video auctions already comply with those provisions. Consequently, CBO estimates that the incremental cost to comply with the mandates would be minimal and fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Tiffany Arthur (for federal costs) and Amy Petz (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 5883 does not authorize funding, therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

EARMARK STATEMENT REQUIRED BY CLAUSE 9 OF RULE XXI OF THE RULES OF HOUSE OF REPRESENTATIVES

H.R. 5883 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House Representatives.

DUPLICATION OF FEDERAL PROGRAMS

This bill does not establish or reauthorize a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee does not believe that the legislation directs an executive branch official to conduct any specific rule making proceedings within the meaning of 5 U.S.C. 551.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

PACKERS AND STOCKYARDS ACT, 1921

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TITLE III—STOCKYARDS

SEC. 301. [When used in this Act—] *In this Act:*

(a) The term “stockyard owner” means any person engaged in the business of conducting or operating a stockyard[;].

(b) The term “stockyard services” means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, [weighting] *weighing*, or handling, in commerce, of livestock[;].

(c) The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services[; and]. *Beginning on the date of the enactment of the Clarification of Treatment of Electronic Sales of Livestock Act of 2016, such term includes any person who engages in the business of buying or selling livestock, on a commission or other fee basis, through the use of online, video,*

or other electronic methods when handling or providing the means to handle receivables or proceeds from such buying or selling, so long as such person's annual average of online, video, or electronic sales of livestock, on a commission or other fee basis, exceeds \$250,000.

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.

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TITLE IV—GENERAL PROVISIONS

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SEC. 409. (a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or [shall wire transfer funds to the seller's account] *shall transfer funds for the full amount of the purchase price to the account of the seller by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary* for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or [shall wire transfer funds to the seller's account] *shall transfer funds for the full amount of the purchase price to the account of the seller by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary* for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency [or dealer shall wire transfer funds] *or dealer shall transfer funds for the full amount of the purchase price by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary* or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an “unfair practice” or violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term “unfair practice” as used in this Act.

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