Booker 1st degree #1

AMENDMENT NO.________ Calendar No.______

Purpose: To require grain proceeds to be held in trust for the benefit of unpaid sellers.

IN THE SENATE OF THE UNITED STATES—119th Cong., 1st Sess.

H. R. 4550

To reauthorize the United States Grain Standards Act, and for other purposes.

Referred to the Committee on ______________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BOOKER to the amendment (No. ________) proposed by ______________________

Viz:

At the end, add the following:

SEC. 10. GRAIN TRUST ON PROCEEDS FOR THE BENEFIT OF UNPAID SELLERS.

The United States Grain Standards Act (7 U.S.C. 71 et seq.) is amended by adding at the end the following:

"SEC. 23. GRAIN TRUST ON PROCEEDS FOR THE BENEFIT OF UNPAID SELLERS.

"(a) FINDINGS; PURPOSES.—

"(1) FINDINGS.—Congress finds that—

"(A) a burden on commerce in grain is caused by financing arrangements under which elevators, mill operators, or other purchasers who have not made payment for grain purchased, contracted to be purchased, or otherwise handled by them on behalf of another person encumber or give lenders a security interest in—

"(i) that grain, or on inventories of food or other products derived from that grain; and

"(ii) any receivables or proceeds from the sale of that grain or products; and

"(B) financing arrangements described in subparagraph (A) are contrary to the public interest.

"(2) PURPOSES.—The purposes of this section are to remedy the burden on commerce in grain described in paragraph (1)(A) and to protect the public interest.

"(b) HOLDING IN TRUST.—

"(1) IN GENERAL.—Grain received by an elevator, mill operator, or other purchaser in any transaction, and any receivables or proceeds from the sale of that grain, shall be held by that elevator, mill operator, or other purchaser in trust for the benefit of any unpaid seller of that grain or any agent of that seller involved in the transaction, until full payment of the amounts owed in that transaction has been received by that seller or agent, provided the seller or agent preserves the benefits of the trust in accordance with subsection (c) or (d).

"(2) DISHONORED PAYMENT INSTRUMENT.—Payment shall not be considered to have been made for purposes of paragraph (1) if the seller or agent receives a payment instrument that is dishonored.

"(3) COOPERATIVE ASSOCIATIONS.—This subsection shall not apply to transactions between a cooperative association (as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) and the members of that cooperative association.

"(c) NOTICE REQUIRED TO PRESERVE TRUST.—

"(1) IN GENERAL.—Subject to subsection (d), the unpaid seller or agent for whom grain and receivables or proceeds are held in trust under subsection (b)(1) shall lose the benefits of that trust unless that seller or agent has given written notice of intent to preserve the benefits of the trust to the elevator, mill operator, or other purchaser not later than 30 calendar days after—

"(A) expiration of the time by which payment shall be made, as the parties have expressly agreed to in writing before entering into the transaction;

"(B) expiration of the time prescribed by which payment shall be made, as established in regulations issued by the Secretary, in the event the parties have not expressly agreed to a time by which payment shall be made; or

"(C) the time the seller or agent has received notice that the payment instrument promptly presented for payment has been dishonored.

"(2) NOTICE REQUIREMENTS.—The written notice described in paragraph (1) shall provide information in sufficient detail to identify the transaction subject to the trust.

"(d) ALTERNATIVE METHOD OF PRESERVING TRUST.—

"(1) IN GENERAL.—In lieu of the methods of preserving the benefits of the trust under subsection (c), an unpaid seller or agent for whom grain and receivables or proceeds are held in trust under subsection (b)(1) may use ordinary and usual billing or invoice statements to provide notice of the intent of the seller or agent to preserve the benefits of the trust.

"(2) BILL OR INVOICE REQUIREMENTS.—The bill or invoice statement described in paragraph (1) shall—

"(A) provide information in sufficient detail to identify the transaction subject to the trust and the terms of the payment; and

"(B) contain on the face of the statement the following: 'The grain listed on this invoice is sold subject to the statutory trust authorized by section 23 of the United States Grain Standards Act (7 U.S.C. 71 et seq.). The seller of this grain and any agent of that seller involved in this transaction retains a trust claim over this grain, all inventories of food or other products derived from this grain, and any receivables or proceeds from the sale of this grain until full payment is received.'.

"(e) CAUSE OF ACTION.—

"(1) IN GENERAL.—A seller of grain or agent of that seller involved in the transaction who has preserved the benefits of the trust in accordance with subsection (c) or (d) shall have a cause of action for breach of fiduciary duty against an elevator, mill operator, or other purchaser who fails to make full payment of any amounts owed to that seller or agent.

"'(2) LIABILITY.—An elevator, mill operator, or other purchaser described in paragraph (1) shall be—

"(A) liable to the seller or agent described in that paragraph until full payment of the amounts owed in the transaction has been received by that seller or agent; and

"(B) subject to such other equitable or remedial relief as the court may determine to be appropriate.

"(3) LIMITATIONS.—No fiduciary shall be liable for a breach of fiduciary duty under this section if that breach was committed—

"(A) before the elevator, mill operator, or other purchaser of grain became a fiduciary; or

"(B) after the elevator, mill operator, or other purchaser of grain ceased to be a fiduciary.

"(f) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States shall have jurisdiction over—

"(1) an action brought by a beneficiary of a trust under subsection (b) to enforce payment from the trust; and

"(2) an action brought by the Secretary to prevent and restrain the dissipation of a trust under subsection (b).".