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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To confer in the Secretary of Agriculture the authority to use civil investigative demands for enforcement of the Packers and Stockyards Act, 1921, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCANLON introduced the following bill; which was referred to the Committee on _____

A BILL

To confer in the Secretary of Agriculture the authority to use civil investigative demands for enforcement of the Packers and Stockyards Act, 1921, 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 “Packers and Stock-
5 yards Improvements Act”.

1 **SEC. 2. INVESTIGATION OF LIVE POULTRY DEALERS.**

2 (a) ADMINISTRATIVE ENFORCEMENT AUTHORITY
3 OVER LIVE POULTRY DEALERS.—Sections 203, 204, and
4 205 of the Packers and Stockyards Act, 1921 (7 U.S.C.
5 193, 194, and 195), are each amended by inserting “, live
6 poultry dealer,” after “packer” each place it appears.

7 (b) REPEALS.—Sections 411, 412, and 413 of the
8 Packers and Stockyards Act, 1921 (7 U.S.C. 228b–2,
9 228b–3, and 228b–4) are repealed.

10 (c) CONFORMING AMENDMENTS.—Sections 414 and
11 415 of the Packers and Stockyards Act, 1921 (7 U.S.C.
12 228c and 228d) are redesignated as sections 411 and 412,
13 respectively.

14 **SEC. 3. SHARING OF LIVESTOCK DATA.**

15 Section 251(b)(2) of the Agricultural Marketing Act
16 of 1946 (7 U.S.C. 1636) is amended—

17 (1) by redesignating subparagraphs (B) and
18 (C) as subparagraphs (C) and (D), respectively; and

19 (2) by inserting after subparagraph (A), the fol-
20 lowing:

21 “(B) on a regular and continual basis,
22 to—

23 “(i) any person employed by the De-
24 partment of Agriculture who is charged
25 with the duty of enforcing or carrying into
26 effect any provision of the Packers and

1 Stockyards Act, 1921 (7 U.S.C. 201 et
2 seq.), for the purpose of monitoring viola-
3 tions of such Act; and

4 “(ii) any person employed by the
5 Commodity Futures Trading Commission
6 who is charged with the duty of enforcing
7 or carrying into effect any provision of the
8 Commodity Exchange Act (7 U.S.C. 1 et
9 seq.), for the purpose of monitoring viola-
10 tions of such Act.”.

11 **SEC. 4. CIVIL INVESTIGATIVE DEMANDS.**

12 Title IV of the Packers and Stockyards Act, 1921
13 (7 U.S.C. 221 et seq.) is amended by inserting before sec-
14 tion 417 the following:

15 **“SEC. 413. CIVIL INVESTIGATIVE DEMANDS.**

16 **“(a) DEMANDS.—**

17 **“(1) IN GENERAL.—**Whenever the Secretary
18 has reason to believe that any person may be in pos-
19 session, custody, or control of any documentary ma-
20 terial or tangible things, or may have any informa-
21 tion relevant to an unlawful practice under section
22 202, the Secretary may, before the institution of any
23 proceedings under section 203(a), issue in writing
24 and cause to be served upon such person, a civil in-
25 vestigative demand requiring such person to—

1 “(A) produce such documentary material
2 for inspection and copying or reproduction;

3 “(B) submit such tangible things;

4 “(C) file written reports or answers to
5 questions;

6 “(D) give oral testimony concerning docu-
7 mentary material or other information; or

8 “(E) furnish any combination of such ma-
9 terial, tangible things, answers, or testimony.

10 “(2) REQUIREMENTS.—Each civil investigative
11 demand shall state the nature of the conduct consti-
12 tuting the alleged violation which is under investiga-
13 tion and the provision of law applicable to such vio-
14 lation.

15 “(3) PRODUCTION OF DOCUMENTS.—Each civil
16 investigative demand for the production of documen-
17 tary material shall—

18 “(A) describe each class of documentary
19 material to be produced under the demand with
20 such definiteness and certainty as to permit
21 such material to be fairly identified;

22 “(B) prescribe a return date or dates
23 which will provide a reasonable period of time
24 within which the material so demanded may be

1 assembled and made available for inspection
2 and copying or reproduction; and

3 “(C) identify the custodian to whom such
4 material shall be made available.

5 “(4) PRODUCTION OF THINGS.—Each civil in-
6 vestigative demand for the submission of tangible
7 things shall—

8 “(A) describe each class of tangible things
9 to be submitted under the demand with such
10 definiteness and certainty as to permit such
11 things to be fairly identified;

12 “(B) prescribe a return date or dates
13 which will provide a reasonable period of time
14 within which the things so demanded may be
15 assembled and submitted; and

16 “(C) identify the custodian to whom such
17 things shall be submitted.

18 “(5) DEMAND FOR WRITTEN REPORTS OR AN-
19 SWERS.—Each civil investigative demand for written
20 reports or answers to questions shall—

21 “(A) propound with definiteness and cer-
22 tainty the reports to be produced or the ques-
23 tions to be answered;

1 “(B) prescribe a date or dates at which
2 time written reports or answers to questions
3 shall be submitted; and

4 “(C) identify the custodian to whom such
5 reports or answers shall be submitted.

6 “(6) ORAL TESTIMONY.—Each civil investiga-
7 tive demand for the giving of oral testimony shall—

8 “(A) prescribe a date, time, and place at
9 which oral testimony shall be commenced; and

10 “(B) identify a packers and stockyards in-
11 vestigator who shall conduct the investigation
12 and the custodian to whom the transcript of
13 such investigation shall be submitted.

14 “(7) SERVICE.—Any civil investigative demand
15 issued, and any enforcement petition filed, under
16 this section may be served—

17 “(A) by any packers and stockyards inves-
18 tigator at any place within the territorial juris-
19 diction of any court of the United States; and

20 “(B) upon any person who is not found
21 within the territorial jurisdiction of any court of
22 the United States—

23 “(i) in such manner as the Federal
24 Rules of Civil Procedure prescribe for serv-
25 ice in a foreign nation; and

1 “(ii) to the extent that courts of the
2 United States have authority to assert ju-
3 risdiction over such person, consistent with
4 due process, the United States District
5 Court for the District of Columbia shall
6 have the same jurisdiction to take any ac-
7 tion respecting compliance with this section
8 by such person that such district court.

9 “(8) METHOD OF SERVICE.—Service of any
10 civil investigative demand or any enforcement peti-
11 tion filed under this section may be made upon a
12 person, including any natural person or any legal en-
13 tity, by—

14 “(A) delivering a duly executed copy of
15 such demand or petition to the individual or to
16 any partner, executive officer, managing agent,
17 or general agent of such person, or to any agent
18 of such person authorized by appointment or by
19 law to receive service of process on behalf of
20 such person;

21 “(B) delivering a duly executed copy of
22 such demand or petition to the principal office
23 or place of business of the person to be served;
24 or

1 “(C) depositing a duly executed copy in the
2 United States mails, by registered or certified
3 mail, return receipt requested, duly addressed
4 to such person at the principal office or place
5 of business of such person.

6 “(9) PROOF OF SERVICE.—

7 “(A) IN GENERAL.—A verified return by
8 the individual serving any civil investigative de-
9 mand or any enforcement petition filed under
10 this section setting forth the manner of such
11 service shall be proof of such service.

12 “(B) RETURN RECEIPTS.—In the case of
13 service by registered or certified mail, such re-
14 turn shall be accompanied by the return post
15 office receipt of delivery of such demand or en-
16 forcement petition.

17 “(10) PRODUCTION OF DOCUMENTARY MATE-
18 RIAL.—The production of documentary material in
19 response to a civil investigative demand shall be
20 made under a sworn certificate, in such form as the
21 demand designates by the person, if a natural per-
22 son, to whom the demand is directed or, if not a
23 natural person, by any person having knowledge of
24 the facts and circumstances relating to such produc-
25 tion, to the effect that all of the documentary mate-

1 rial required by the demand and in the possession,
2 custody, or control of the person to whom the de-
3 mand is directed has been produced and made avail-
4 able to the custodian.

5 “(11) SUBMISSION OF TANGIBLE THINGS.—The
6 submission of tangible things in response to a civil
7 investigative demand shall be made under a sworn
8 certificate, in such form as the demand designates
9 by the person, if a natural person, to whom the de-
10 mand is directed or, if not a natural person, by any
11 person having knowledge of the facts and cir-
12 cumstances relating to such production, to the effect
13 that all of the tangible things required by the de-
14 mand and in the possession, custody, or control of
15 the person to whom the demand is directed have
16 been submitted to the custodian.

17 “(12) SEPARATE ANSWERS.—Each reporting
18 requirement or question in a civil investigative de-
19 mand shall be answered separately and fully in writ-
20 ing under oath, unless such requirement is objected
21 to. Such an objection shall be stated in lieu of an
22 answer, and it shall be submitted under a sworn cer-
23 tificate, in such form as the demand designates—

24 “(A) by the person, if a natural person, to
25 whom the demand is directed; or

1 “(B) if not a natural person, by any per-
2 son responsible for answering each reporting re-
3 quirement or question to the effect that all in-
4 formation required by the demand and in the
5 possession, custody, control, or knowledge of
6 the person to whom the demand is directed has
7 been submitted.

8 “(13) TESTIMONY.—

9 “(A) IN GENERAL.—

10 “(i) OATH AND RECORDATION.—The
11 examination of any person pursuant to a
12 demand for oral testimony served under
13 this subsection shall be taken before a
14 packers and stockyards investigator au-
15 thorized to administer oaths and affirma-
16 tions by the laws of the United States or
17 of the place at which the examination is
18 held. The officer before whom oral testi-
19 mony is to be taken shall put the witness
20 on oath or affirmation and shall person-
21 ally, or by any individual acting under the
22 direction of and in the presence of the offi-
23 cer, record the testimony of the witness.

1 “(ii) TRANSCRIPTION.—The testimony
2 shall be taken stenographically and tran-
3 scribed.

4 “(iii) TRANSMISSION TO CUSTO-
5 DIAN.—After the testimony is fully tran-
6 scribed, the officer before whom the testi-
7 mony is taken shall promptly transmit a
8 copy of the transcript of the testimony to
9 the custodian.

10 “(B) PARTIES PRESENT.—Any packers
11 and stockyards investigator before whom oral
12 testimony is to be taken shall exclude from the
13 place where the testimony is to be taken all
14 other persons, except the person giving the tes-
15 timony, the attorney for that person, the officer
16 before whom the testimony is to be taken, an
17 investigator or representative of an agency with
18 which the Secretary is engaged in a joint inves-
19 tigation, and any stenographer taking such tes-
20 timony.

21 “(C) LOCATION.—The oral testimony of
22 any person taken pursuant to a civil investiga-
23 tive demand shall be taken in the judicial dis-
24 trict of the United States in which such person
25 resides, is found, or transacts business, or in

1 such other place as may be agreed upon by the
2 packers and stockyards investigator before
3 whom the oral testimony of such person is to be
4 taken and such person.

5 “(D) ATTORNEY REPRESENTATION.—

6 “(i) IN GENERAL.—Any person com-
7 pelled to appear under a civil investigative
8 demand for oral testimony pursuant to this
9 section may be accompanied, represented,
10 and advised by an attorney.

11 “(ii) AUTHORITY.—The attorney may
12 advise a person described in clause (i), in
13 confidence, either upon the request of such
14 person or upon the initiative of the attor-
15 ney, with respect to any question asked of
16 such person.

17 “(iii) OBJECTIONS.—A person de-
18 scribed in clause (i), or the attorney for
19 that person, may object on the record to
20 any question, in whole or in part, and such
21 person shall briefly state for the record the
22 reason for the objection. An objection may
23 properly be made, received, and entered
24 upon the record when it is claimed that
25 such person is entitled to refuse to answer

1 the question on grounds of any constitu-
2 tional or other legal right or privilege, in-
3 cluding the privilege against self-incrimina-
4 tion, but such person shall not otherwise
5 object to or refuse to answer any question,
6 and such person or attorney shall not oth-
7 erwise interrupt the oral examination.

8 “(iv) REFUSAL TO ANSWER.—If a
9 person described in clause (i) refuses to
10 answer any question—

11 “(I) the Secretary may petition
12 the district court of the United States
13 pursuant to this section for an order
14 compelling such person to answer
15 such question; and

16 “(II) if the refusal is on grounds
17 of the privilege against self-incrimina-
18 tion, the testimony of such person
19 may be compelled in accordance with
20 the provisions of section 6004 of title
21 18, United States Code.

22 “(E) TRANSCRIPTS.—For the purposes of
23 this subsection—

24 “(i) after the testimony of any witness
25 is fully transcribed, the packers and stock-

1 yards investigator shall afford the witness
2 (who may be accompanied by an attorney)
3 a reasonable opportunity to examine the
4 transcript;

5 “(ii) the transcript shall be read to or
6 by the witness, unless such examination
7 and reading are waived by the witness;

8 “(iii) any changes in form or sub-
9 stance which the witness desire to make
10 shall be entered and identified upon the
11 transcript by the packers and stockyards
12 investigator, with a statement of the rea-
13 sons given by the witness for making such
14 changes;

15 “(iv) the transcript shall be signed by
16 the witness, unless the witness in writing
17 waives the signing, is ill, cannot be found,
18 or refuses to sign; and

19 “(v) if the transcript is not signed by
20 the witness during the 30-day period fol-
21 lowing the date on which the witness is
22 first afforded a reasonable opportunity to
23 examine the transcript, the packers and
24 stockyards investigator shall sign the tran-
25 script and state on the record the fact of

1 the waiver, illness, absence of the witness,
2 or the refusal to sign, together with any
3 reasons given for the failure to sign.

4 “(F) CERTIFICATION BY INVESTIGATOR.—
5 The packers and stockyards investigator shall
6 certify on the transcript that the witness was
7 duly sworn by him or her and that the tran-
8 script is a true record of the testimony given by
9 the witness, and the packers and stockyards in-
10 vestigator shall promptly deliver the transcript
11 or send it by registered or certified mail to the
12 custodian.

13 “(G) COPY OF TRANSCRIPT.—The packers
14 and stockyards investigator shall furnish a copy
15 of the transcript (upon payment of reasonable
16 charges for the transcript) to the witness only,
17 except that the Secretary may for good cause
18 limit such witness to inspection of the official
19 transcript of his testimony.

20 “(H) WITNESS FEES.—Any witness ap-
21 pearing for the taking of oral testimony pursu-
22 ant to a civil investigative demand shall be enti-
23 tled to the same fees and mileage which are
24 paid to witnesses in the district courts of the
25 United States.

1 “(b) CONFIDENTIAL TREATMENT OF DEMAND MA-
2 TERIAL.—

3 “(1) IN GENERAL.—Documentary materials
4 and tangible things received as a result of a civil in-
5 vestigative demand shall be subject to requirements
6 and procedures regarding confidentiality, in accord-
7 ance with rules established by the Secretary.

8 “(2) DISCLOSURE TO CONGRESS.—No rule es-
9 tablished by the Secretary regarding the confiden-
10 tiality of materials submitted to, or otherwise ob-
11 tained by, the Secretary shall, pursuant to a civil in-
12 vestigative demand under this section, be intended to
13 prevent disclosure to either House of Congress or to
14 an appropriate committee of the Congress, except
15 that the Secretary is permitted to adopt rules allow-
16 ing prior notice to any party that owns or otherwise
17 provided the material to the Secretary and had des-
18 ignated such material as confidential.

19 “(c) PETITION FOR ENFORCEMENT.—

20 “(1) IN GENERAL.—Whenever any person fails
21 to comply with any civil investigative demand duly
22 served upon such person under this section, or when-
23 ever satisfactory copying or reproduction of material
24 requested pursuant to the demand cannot be accom-
25 plished and such person refuses to surrender such

1 material, the Secretary, through such officers or at-
2 torneys as the Secretary may designate, may file, in
3 the district court of the United States for any judi-
4 cial district in which such person resides, is found,
5 or transacts business, and serve upon such person,
6 a petition for an order of such court for the enforce-
7 ment of this section.

8 “(2) SERVICE OF PROCESS.—All process of any
9 court to which application may be made as provided
10 in this subsection may be served in any judicial dis-
11 trict.

12 “(d) PETITION FOR ORDER MODIFYING OR SETTING
13 ASIDE DEMAND.—

14 “(1) IN GENERAL.—Any person served in a civil
15 investigative demand under subsection (a) may, dur-
16 ing the period described in paragraph (2), file with
17 the Secretary a petition for an order by the Sec-
18 retary modifying or setting aside the demand.

19 “(2) PERIOD DESCRIBED.—A petition under
20 paragraph (1) shall be made—

21 “(A) not later than 20 days after the serv-
22 ice of any civil investigative demand upon any
23 person under subsection (a), or at any time be-
24 fore the return date specified in the demand,
25 whichever period is shorter; or

1 “(B) in such period exceeding 20 days
2 after service or in excess of such return date as
3 may be prescribed in writing, subsequent to
4 service, by any packers and stockyards investi-
5 gator named in the demand.

6 “(3) COMPLIANCE DURING PENDENCY.—The
7 time permitted for compliance with the demand in
8 whole or in part, as determined proper and ordered
9 by the Secretary, shall not run during the pendency
10 of a petition under paragraph (1) by the Secretary,
11 except that such person shall comply with any por-
12 tions of the demand not sought to be modified or set
13 aside.

14 “(4) SPECIFIC GROUNDS.—A petition under
15 paragraph (1) shall specify each ground upon which
16 the petitioner relies in seeking relief, and may be
17 based upon any failure of the demand to comply
18 with the provisions of this section, or upon any con-
19 stitutional or other legal right or privilege of such
20 person.

21 “(e) CUSTODIAL CONTROL.—At any time during
22 which any custodian is in custody or control of any docu-
23 mentary material, tangible things, reports, answers to
24 questions, or transcripts of oral testimony given by any
25 person in compliance with any civil investigative demand,

1 such person may file, in the district court of the United
2 States for the judicial district within which the office of
3 such custodian is situated, and serve upon such custodian,
4 a petition for an order of such court requiring the per-
5 formance by such custodian of any duty imposed upon
6 such custodian by this section or rule promulgated by the
7 Secretary.

8 “(f) JURISDICTION OF COURT.—

9 “(1) IN GENERAL.—Whenever any petition is
10 filed in any district court of the United States under
11 this section, such court shall have jurisdiction to
12 hear and determine the matter so presented, and to
13 enter such order or orders as may be required to
14 carry out the provisions of this section.

15 “(2) APPEAL.—Any final order entered as de-
16 scribed in paragraph (1) shall be subject to appeal
17 pursuant to section 1291 of title 28.

18 “(g) DEFINITIONS.—In this section:

19 “(1) CIVIL INVESTIGATIVE DEMAND.—The term
20 ‘civil investigative demand’ means any demand
21 issued under subsection (a).

22 “(2) CUSTODIAN.—The term ‘custodian’ means
23 the custodian or any deputy custodian designated by
24 the Secretary.

1 “(3) DOCUMENTARY MATERIAL.—The term
2 ‘documentary material’ includes the original or any
3 copy of any book, record, report, memorandum,
4 paper, communication, tabulation, chart, or other
5 document or media file.

6 “(4) PACKERS AND STOCKYARDS INVESTI-
7 GATOR.—The term ‘packers and stockyards investi-
8 gator’ means any attorney or investigator employed
9 by the Department of Agriculture who is charged
10 with the duty of enforcing or carrying into effect any
11 provision of this chapter, or any officer or employee
12 of the United States acting under the direction and
13 supervision of such attorney or investigator in con-
14 nection with a packers and stockyards investigation.

15 “(5) VIOLATION.—The term ‘violation’ means
16 any act or omission that, if proved, would constitute
17 a violation of any provision of this chapter.

18 **“SEC. 414. WHISTLEBLOWER PROTECTIONS.**

19 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-
20 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

21 “(1) IN GENERAL.—No covered entity may dis-
22 charge, demote, intimidate, restrain, coerce, black-
23 list, harass, or in any other manner retaliate, dis-
24 criminate, or take adverse action against a covered

1 individual because of any lawful act done by the cov-
2 ered individual—

3 “(A) to provide or cause to be provided to
4 the Federal Government, an attorney general of
5 a State, or a person with supervisory authority
6 over the covered individual, or such other per-
7 son working for the employer who has the au-
8 thority to investigate, discover, or terminate
9 misconduct, information relating to any viola-
10 tion of, or any act or omission the covered indi-
11 vidual reasonably believes to be a violation of,
12 a provision of this chapter; or

13 “(B) to cause to be filed, testify in, partici-
14 pate in, or otherwise assist a Federal Govern-
15 ment investigation or a Federal Government
16 proceeding filed or about to be filed (with any
17 knowledge of the employer) or any cause of ac-
18 tion relating to any violation of, or any act or
19 omission the covered individual reasonably be-
20 lieves to be a violation of, a provision of this
21 chapter.

22 “(2) LIMITATION ON PROTECTIONS.—Para-
23 graph (1) shall not apply to any covered individual
24 if—

1 “(A) the covered individual planned and
2 initiated a violation or attempted violation of a
3 provision of this chapter;

4 “(B) the covered individual planned and
5 initiated a violation or attempted violation of
6 another criminal law in conjunction with a vio-
7 lation or attempted violation of a provision of
8 this chapter; or

9 “(C) the covered individual planned and
10 initiated an obstruction or attempted obstruc-
11 tion of an investigation by the Department of
12 Agriculture of a violation of a provision of this
13 chapter.

14 “(3) DEFINITIONS.—In this section:

15 “(A) COVERED INDIVIDUAL.—The term
16 ‘covered individual’ means an employee, con-
17 tractor, subcontractor, or agent of an employer.

18 “(B) COVERED ENTITY.—The term ‘cov-
19 ered entity’ means a person, or any officer, em-
20 ployee, contractor, subcontractor, or agent of
21 such person.

22 “(C) FEDERAL GOVERNMENT.—The term
23 ‘Federal Government’ means—

24 “(i) a Federal regulatory or law en-
25 forcement agency; or

1 “(ii) any Member of Congress or com-
2 mittee of Congress.

3 “(b) ENFORCEMENT ACTION.—

4 “(1) IN GENERAL.—A covered individual who
5 alleges discharge or other discrimination by any cov-
6 ered entity in violation of subsection (a) may seek
7 relief under subsection (c) by—

8 “(A) filing a complaint with the Secretary
9 of Labor; or

10 “(B) if the Secretary of Labor has not
11 issued a final decision after the day that is 180
12 days after the date on which the complaint was
13 filed, and such delay is not due to the bad faith
14 of the claimant, bringing an action in the ap-
15 propriate district court of the United States.

16 “(2) PROCEDURE.—

17 “(A) IN GENERAL.—The Secretary of
18 Labor shall establish rules and procedures to
19 govern complaints filed under paragraph (1)(A)
20 that are similar to the rules and procedures set
21 forth in section 42121(b) of title 49, United
22 States Code (as in effect on the date of enact-
23 ment of this section).

24 “(B) REQUIREMENT.—Notification related
25 to a complaint filed under paragraph (1)(A)

1 shall be made to any individual named in the
2 complaint and to the covered entity.

3 “(C) BURDENS OF PROOF.—An action
4 brought under paragraph (1)(B) shall be gov-
5 erned by the legal burdens of proof described in
6 section 42121(b) of title 49, United States
7 Code.

8 “(D) STATUTE OF LIMITATIONS.—A com-
9 plaint under paragraph (1)(A) shall be filed
10 with the Secretary of Labor not later than 180
11 days after the date on which the violation oc-
12 curs.

13 “(E) CIVIL ACTIONS TO ENFORCE.—If a
14 person fails to comply with an order or prelimi-
15 nary order issued by the Secretary of Labor
16 pursuant to the procedures established under
17 subparagraph (A), the Secretary of Labor or
18 the person on whose behalf the order was issued
19 may bring a civil action to enforce the order in
20 the district court of the United States for the
21 judicial district in which the violation occurred.

22 “(c) REMEDIES.—

23 “(1) IN GENERAL.—A covered individual pre-
24 vailing in any action under subsection (b)(1) shall be

1 entitled to all relief necessary to make the covered
2 individual whole, including—

3 “(A) reinstatement with the same seniority
4 status that the covered individual would have
5 had, but for the discrimination, retaliation, or
6 adverse action;

7 “(B) the amount of back pay or lost in-
8 come, with interest; and

9 “(C) compensation for any special damages
10 sustained as a result of the retaliation, discrimi-
11 nation, or adverse action, including litigation
12 costs, expert witness fees, and reasonable attor-
13 ney’s fees.

14 “(2) PUNITIVE DAMAGES.—Relief in any action
15 under subsection (b)(1) may include punitive dam-
16 ages in an amount not to exceed \$400,000.

17 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—
18 Nothing in this section shall be determined to diminish
19 the rights, privileges, or remedies of any covered individual
20 under any Federal or State law, or under any collective
21 bargaining agreement.”.

1 **SEC. 5. UNFAIR PRACTICES IN LIVESTOCK, POULTRY, AND**
2 **MEAT MARKETS.**

3 Subtitle A of title II of the Packers and Stockyards
4 Act, 1921 (7 U.S.C. 191 et seq.) is amended by inserting
5 after section 202 (7 U.S.C. 192) the following:

6 **“SEC. 202A.(a) For purposes of section 202(a), the term ‘unfair**
7 **practice’ includes any act in which a packer,**
8 **swine contractor, or live poultry dealer is en-**
9 **gaged that—**

10 “(1) is a collusive, coercive, predatory, restric-
11 tive, deceitful, or exclusionary method of competition
12 that may negatively affect competitive conditions; or

13 “(2) causes or is likely to cause substantial in-
14 jury to one or more market participants, which—

15 “(A) the participant or participants cannot
16 reasonably avoid; and

17 “(B) the packer, swine contractor, or live
18 poultry dealer cannot justify by establishing
19 countervailing benefits to the market partici-
20 pant or participants or to competition in the
21 market that outweighs the substantial injury or
22 likelihood of substantial injury.

23 “(b) For purposes of subsection (a)(2)(A), an injury
24 shall not be treated as reasonably avoidable—

25 “(1) solely because the act referred to in such
26 subsection has been disclosed to market participants

1 by the packer, swine contractor, or live poultry deal-
2 er engaging in such act; and

3 “(2) if to avoid such an injury, a market partic-
4 ipant would be required to take unreasonable steps,
5 such as exiting the market or making unreasonable
6 additional investments or efforts.

7 “(c) For purposes of section 202(a), the following
8 acts shall be considered to be unfair practices:

9 “(1) A live poultry dealer utilizing a comparison
10 of poultry growers to reduce any rate of compensa-
11 tion under the contract.

12 “(2) A live poultry dealer operating a compari-
13 son of poultry growers that results in excessive vari-
14 ability in compensation to the grower.

15 “(3) A packer utilizing a price term in a live-
16 stock or meat contract that is based on other trans-
17 actions of livestock or meat, where the price term is
18 unreasonably variable, including owing to insuffi-
19 cient specificity regarding the type or quality of the
20 livestock or meat in the other transactions on which
21 the price term is based or to insufficient trans-
22 actions on which the price is based.

23 “(4) A packer requiring a producer of livestock
24 to exclusively or near exclusively transact with a
25 packer, unless the producer has an option to trade

1 a sufficient amount of the livestock to be procured
2 under a contract through a livestock exchange in
3 which the packer is a participant among other pack-
4 ers such that the exchange will be reasonably com-
5 petitive in price discovery.

6 “(5) A packer failing to fully compensate pro-
7 ducers of livestock for any delay in pickup of the
8 livestock beyond seven days from the date on which
9 the cattle were priced for purchase.

10 “(6) A live poultry dealer terminating a poultry
11 growing arrangement, or a swine contractor termi-
12 nating a swine production contract, without full
13 compensation to the grower for debt incurred or
14 other investments reasonably requested or made in
15 order to secure or maintain the poultry growing ar-
16 rangement or swine production contract including all
17 renewals to any original contract between the live
18 poultry dealer or swine contractor and the grower.

19 “(7) A packer failing to fully compensate live-
20 stock producers that regularly market livestock to a
21 packer at a processing plant arising from the closure
22 of the processing plant, including for a period cov-
23 ering no less than seven years the reasonable addi-
24 tional expenses arising from marketing the livestock
25 at other plants within reasonable marketing distance

1 of the producer and lower prices if the closure re-
2 sults in reduced competition for livestock within a
3 reasonable marketing distance of the closed plant.”.