

GENETICALLY ENGINEERED TECHNOLOGY FARMER PROTECTION ACT

Sunday, 29 June 2008

HR 6637 IH
110th CONGRESS 2d Session

H. R. 6637

To provide additional protections for farmers and ranchers that may be harmed economically by genetically engineered seeds, plants, or animals, to ensure fairness for farmers and ranchers in their dealings with biotech companies that sell genetically engineered seeds, plants, or animals, to assign liability for injury caused by genetically engineered organisms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
July 29, 2008

Mr. KUCINICH (for himself, Mr. SHAYS, Ms. SCHAKOWSKY, Mr. GRIJALVA, Ms. LEE, Ms. LINDA T. SANCHEZ of California, Mr. DEFAZIO, Mr. MCDERMOTT, Mr. STARK, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Energy and Commerce and Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide additional protections for farmers and ranchers that may be harmed economically by genetically engineered seeds, plants, or animals, to ensure fairness for farmers and ranchers in their dealings with biotech companies that sell genetically engineered seeds, plants, or animals, to assign liability for injury caused by genetically engineered organisms, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the 'Genetically Engineered Technology Farmer Protection Act'.
- (b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I--GENETICALLY ENGINEERED CROP AND ANIMAL FARMER PROTECTION

Sec. 101. Short title; findings.

Sec. 102. Definitions.

Sec. 103. Information requirements regarding sale of genetically engineered seeds, plants, and animals.

Sec. 104. Contract limitations regarding sale of genetically engineered seeds, plants, and animals.

Sec. 105. Prevention of noncompetitive practices involving technology fees.

Sec. 106. Measures to avoid cross pollination involving genetically engineered seeds or plants.

Sec. 107. Resistance of agricultural pests to certain naturally occurring pesticide; amendment to Federal insecticide, fungicide, and Rodenticide Act.

Sec. 108. Prohibition on labeling certain seeds as non-genetically engineered.

Sec. 109. Prohibition on certain non-fertile plant seeds.

Sec. 110. Prohibition on loan discrimination.

Sec. 111. Civil penalties for violation.

Sec. 112. Citizen suits.

TITLE II--GENETICALLY ENGINEERED ORGANISM LIABILITY

Sec. 201. Short title.

Sec. 202. Findings.

Sec. 203. Liability.

TITLE I--GENETICALLY ENGINEERED CROP AND ANIMAL FARMER

PROTECTION

SEC. 101. SHORT TITLE; FINDINGS.

Crop and Animal Farmer Protection Act'.

(a) Short Title- This title may be cited as the 'Genetically Engineered

(b) Findings- Congress finds the following:

(1) Agribusiness and biotechnology companies have rapidly consolidated market power at the same time as the average farmer's profits and viability have significantly declined.

(2) Policies promoted by biotech corporations, such as patenting of seeds, depriving farmers the right to save seed, unreasonable seed contracts, and intrusion into everyday farm operations, have systematically acted to remove basic farmer rights enjoyed since the beginning of agriculture and essential for agricultural sustainability and the survival of family farms.

(3) The introduction of genetically engineered crops has also created obstacles for farmers, including the loss of markets and increased liability concerns.

(4) To mitigate the abuses upon farmers, a clear set of farmer rights must be established.

SEC. 102. DEFINITIONS.

In this title:

(1) GENETICALLY ENGINEERED ANIMAL- The term 'genetically engineered animal' means an animal that contains a genetically engineered material or was produced with a genetically engineered material. An animal shall be considered to contain a genetically engineered material or to have been produced with a genetically engineered material if the animal has been injected or otherwise treated with a genetically engineered material or is the offspring of an animal that has been so injected or treated.

(2) GENETICALLY ENGINEERED PLANT- The term 'genetically engineered plant' means a plant that contains a genetically engineered material or was produced from a genetically engineered seed. A plant shall be considered to contain a genetically engineered material if the plant has been injected or otherwise treated with a genetically engineered material (except that the use of manure as a fertilizer for the plant may not be construed to mean that the plant is produced with a genetically engineered material).

(3) **GENETICALLY ENGINEERED SEED-** The term 'genetically engineered seed' means a seed that contains a genetically engineered material or was produced with a genetically engineered material. A seed shall be considered to contain a genetically engineered material or to have been produced with a genetically engineered material if the seed (or the plant from which the seed is derived) has been injected or otherwise treated with a genetically engineered material (except that the use of manure as a fertilizer for the plant may not be construed to mean that any resulting seeds are produced with a genetically engineered material).

(4) **GENETICALLY ENGINEERED MATERIAL-** The term 'genetically engineered material' means material that has been altered at the molecular or cellular level by means that are not possible under natural conditions or processes (including recombinant DNA and RNA techniques, cell fusion, microencapsulation, macroencapsulation, gene deletion and doubling, introducing a foreign gene, and changing the positions of genes), other than a means consisting exclusively of breeding, conjugation, fermentation, hybridization, in vitro fertilization, tissue culture, or mutagenesis.

(5) **BIOTECH COMPANY-** The term 'biotech company' means a person engaged in the business of creating genetically engineered material or obtaining the patent rights to that material for the purposes of commercial exploitation of that material. The term does not include the employees of such person.

(6) **SECRETARY-** The term 'Secretary' means the Secretary of Agriculture.

SEC. 103. INFORMATION REQUIREMENTS REGARDING SALE OF GENETICALLY ENGINEERED SEEDS, PLANTS, AND ANIMALS.

(a) **Full Disclosure of Risks of Use-** A biotech company that sells any genetically engineered animal, genetically engineered plant, or genetically engineered seed that the biotech company knows, or has reason to believe, will be used by the purchaser in the United States to produce an agricultural commodity shall provide written notice to the purchaser that fully and clearly discloses the possible legal and environmental risks that the use of the genetically engineered animal, genetically engineered plant, or genetically engineered seed may pose to the purchaser.

(b) **Effect of Disclosure-** The provision of written notice under subsection (a) regarding the risks of using a genetically engineered animal, genetically engineered plant, or genetically engineered seed does not relieve the biotech company from any liability that may result from the release of genetically engineered material into the environment. The receipt of the written notice by the purchaser shall not be construed to create any liability on the purchaser.

(c) **Rulemaking-** The Secretary shall issue such rules as may be necessary to implement and enforce this section.

SEC. 104. CONTRACT LIMITATIONS REGARDING SALE OF GENETICALLY ENGINEERED SEEDS, PLANTS, AND ANIMALS.

(a) **Certain Contract Terms and Limitations Unenforceable-** If a contract for the sale of a genetically engineered animal, genetically engineered plant, or genetically engineered seed to a purchaser for use in agricultural production contains a provision described in subsection (b), the provision is hereby declared to be against public policy and therefore void and unenforceable as a matter of law.

(b) **Prohibited Terms and Limitations-** The provisions referred to in subsection (a) are any of the following:

(1) In the case of a sale of genetically engineered plants or genetically engineered seeds, a provision that prohibits the purchaser from retaining a portion of the harvested crop for future crop planting by the purchaser or that charges a fee to retain a portion of the harvested crop for future crop planting.

(2) A provision that limits the ability of the purchaser to recover damages from the biotech company for a genetically engineered animal, genetically engineered plant, or genetically engineered seed that does not perform as advertised.

(3) A provision that shifts any liability from the biotech company to the purchaser.

that requires the purchaser to grant agents of the seller access to the purchaser's property. (4) A provision

provision that mandates arbitration of any disputes between the biotech company and the purchaser. (5) A

provision that mandates any court of jurisdiction for settlement of disputes. (6) A

provision that mandates that the purchaser pay liquidated damages of more than a technology fee or similar fee itself, plus interest. (7) A

provision that imposes any unfair condition upon the purchaser, as determined by the Secretary or a court. (8) A

SEC.

105. PREVENTION OF NONCOMPETITIVE PRACTICES INVOLVING TECHNOLOGY FEES.

(a)

Disclosure of Technology Fees- Any biotech company that sells a genetically engineered animal, genetically engineered plant, or genetically engineered seed for use in agricultural production in the United States shall notify the Secretary, at such times and in such manner as the Secretary shall require, of--

(1) the nature and amount of any technology, nonproduction, royalty, or similar fees collected by the biotech company in each country where that genetically engineered animal, plant, or seed is marketed, and

(2) in the case of genetically engineered plants or genetically engineered seeds, the prices charged by the biotech company for herbicides associated with that genetically engineered seed or plant.

(b) Prohibition on Noncompetitive Practices- A biotech company that sells a genetically engineered animal, genetically engineered plant, or genetically engineered seed for use in agricultural production in the United States may not charge higher technology, nonproduction, royalty, or similar fees for sales of the genetically engineered animal, plant, or seed in the United States than in other countries in which the genetically engineered animal, plant, or seed is sold.

(c) Publication of Data- The Secretary shall publish all data received under subsection (a)(1) every six months in an electronic format and in the Federal Register.

SEC. 106. MEASURES TO AVOID CROSS POLLINATION INVOLVING GENETICALLY ENGINEERED SEEDS OR PLANTS.

(a) Designation of Predominately Outcrossed Pollinators- The Secretary shall determine which plants are predominately outcrossed pollinators and make such information available to persons who sell or purchase such plants or the seeds of such plants for use in agricultural production.

(b) Minimizing the Negative Effects of Predominately Outcrossed Pollinators- The Secretary shall issue rules to require effective mitigation strategies for any crop that is a predominately outcrossed pollinator.

(c) Providing Instructions To Avoid Cross Pollination- The seller of any genetically engineered plant or genetically engineered seed that has been identified as a predominately outcrossed pollinator shall provide written instructions to each purchaser of the plants or seeds regarding how to plant and cultivate the plants or seeds so as to avoid cross contamination.

SEC. 107. RESISTANCE OF AGRICULTURAL PESTS TO CERTAIN NATURALLY OCCURRING PESTICIDE; AMENDMENT TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

Section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)) is amended by

adding at the end the following subsection:

`(11) BT RESISTANCE REGARDING PLANT-INCORPORATED PESTICIDES-

`(A) Not later than six months after the date of enactment of this paragraph, the Administrator, in consultation with the advisory panel established under subparagraph (D), shall establish the best achievable resistance plan for plant-incorporated pesticides engineered to include toxins derived from the bacterium *Bacillus thuringiensis* (which bacterium is referred to in this paragraph as `Bt').

`(B) Once the best achievable resistance plan is established under subparagraph (A), the Administrator shall revoke all Bt registrations that are not in compliance with the plan and may not issue new registrations unless the applicant has achieved the plan.

`(C) If pursuant to subparagraph (A) the Administrator determines that plant-incorporated Bt pesticides may have an unreasonable adverse effect on the environment by facilitating the development of Bt-toxin resistance in pests, or that the review has been inconclusive on whether the pesticide facilitates such resistance, the Administrator shall take such actions under this Act as may be necessary to significantly reduce the extent to which such pesticides are used.

`(D) Before establishing the best achievable resistance plan under subparagraph (A), the Administrator shall, in accordance with procedures under section 25(d), establish an advisory panel to provide advice to the Administrator on scientific matters involved in the review.

`(E) For purposes of this paragraph, the term `plant-incorporated Bt pesticide' means a plant-incorporated pesticide described in subparagraph (A).'

ENGINEERED.

SEC. 108. PROHIBITION ON LABELING CERTAIN SEEDS AS NON-GENETICALLY

A seed company or other person may not sell, or offer for sale, seeds for planting that are labeled as non-genetically engineered or otherwise represented as not containing genetically engineered material if the Secretary finds that any sample of the seeds contains genetically engineered material.

SEC. 109. PROHIBITION ON CERTAIN NON-FERTILE PLANT SEEDS.

Notwithstanding any other provision of law, effective 45 days after the date of the enactment of this title, a person may not manufacture, distribute, sell, plant, or otherwise use any seed that is genetically engineered to produce a plant whose seeds are not fertile or are rendered infertile by the application of an external chemical inducer.

SEC. 110. PROHIBITION ON LOAN DISCRIMINATION.

A financial institution may not discriminate against an agricultural producer that refuses to use genetically engineered plants or animals or add as condition to a loan the requirement that the producer use genetically engineered plants or animals.

SEC. 111. CIVIL PENALTIES FOR VIOLATION.

(a) Authority to Assess Penalties- The Secretary may assess, by written order, a civil penalty against a biotech company or other person that violates a provision of this title, including a regulation promulgated or order issued under this title. Each violation, and each day during which a violation continues, shall be a separate offense.

(b) Amount and Factors in Assessing Penalties- The maximum amount that may be assessed under this section for a violation may not exceed \$100,000. In determining the amount of the civil penalty, the Secretary shall take into account--

(1) the gravity of the violation;

(2) the degree of culpability;

(3) the size and type of the business; and

(4) any history of prior offenses under this title or other laws

administered by the Secretary.

(c) Notice and Opportunity for Hearing- The Secretary shall not assess a civil penalty under this section against a biotech company or other person unless the company is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

(d) Judicial Review- (1) An order assessing a civil penalty against a person under subsection (a) may be reviewed only in accordance with this subsection. The order shall be final and conclusive unless the person--

(A) not later than 30 days after the effective date of the order, files a petition for judicial review in the United States court of appeals for the circuit in which the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia; and

(B) simultaneously sends a copy of the petition by certified mail to the Secretary.

(2) The Secretary shall promptly file in the court a certified copy of the record on which the violation was found and the civil penalty assessed.

(e) Collection Action for Failure To Pay Assessment- If a person fails to pay a civil penalty after the order assessing the civil penalty has become final and unappealable, the Secretary shall refer the matter to the Attorney General, who shall bring a civil action to recover the amount of the civil penalty in United States district court. In the collection action, the validity and appropriateness of the order of the Secretary imposing the civil penalty shall not be subject to review.

SEC. 112. CITIZEN SUITS.

(a) In General- Except as provided in subsection (c), any person may commence a civil action in an appropriate district court of the United States against--

(1) a person who has introduced a genetically engineered organism into the environment without approval under this title;

(2) the Secretary, where there is alleged a failure of the Secretary to perform any act or duty under this title that is the responsibility of the Secretary and is not discretionary; or

(3) the head of another Federal agency, if there is alleged a failure of the agency head to perform any act or duty under this title that is the responsibility of the agency head and is not discretionary.

(b) Relief- In a civil action under this section, the district court involved may, as the case may be--

(1) enforce the compliance of a person with the applicable provisions referred to in the complaint; or

agency head to perform the act or duty referred to in the complaint.

(2) order the Secretary or the

(c) Limitations-

(1) NOTICE TO SECRETARY-

A civil action may not be commenced under subsection (a)(1) prior to 60 days after the plaintiff has provided to the Secretary notice of the violation involved.

(2) RELATION TO

ACTIONS OF SECRETARY- A civil action may not be commenced under subsection (a)(1) against the Secretary if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a district court of the United States to enforce compliance with the applicable provisions referred to in the complaint.

(d) Right of Secretary To

Intervene- In any civil action under subsection (a)(1), the Secretary , if not a party, may intervene as a matter of right.

(e) Award of Costs; Filing

of Bond- In a civil action under subsection (a), the district court involved may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Savings Provision-

This section does not restrict any right that a person (or class of persons) may have under any statute or common law to seek enforcement of the provisions of this title, or to seek any other relief (including relief against the Secretary or the head of another Federal agency).

TITLE II--

GENETICALLY ENGINEERED ORGANISM LIABILITY

SEC. 201. SHORT

TITLE.

This title may be

cited as the `Genetically Engineered Organism Liability Act of 2007'.

SEC. 202.

FINDINGS.

The Congress

finds the following:

(1) The

negative consequences of genetically engineered crops may impact farmers who grow these crops, neighbor farmers who do not grow these crops, and consumers.

(2)
Biotech companies are selling a technology that is being commercialized ahead of the new and unknown science of genetic engineering.

(3)
Farmers may suffer from crop failures, neighbor and nearby farmers may suffer from cross pollination, increased insect resistance, and unwanted volunteer genetically engineered plants, and consumers may suffer from health and environmental impacts.

(4)
Therefore, biotech companies should be found liable for the failures of genetically engineered crops when they arise.

SEC.
203. LIABILITY.

(a)
Cause of Action- A biotech company is liable to any party injured by the release of a genetically engineered organism into the environment if that injury results from that genetic engineering. The prevailing plaintiff in an action under this subsection may recover reasonable attorney's fees and other litigation expenses as a part of the costs.

(b)
Indemnity- For the purposes of subsection (a), the term `injury' includes any liability of a person who uses that organism in accordance with applicable Federal and other law, if that liability arises from that use.

(c) Not Waivable- The liability created by subsection (a) may not be waived or otherwise avoided by contract.

(d) Definition- As used in this section, the term `biotech company' means a person--

(1) engaged in the business of genetically engineering an organism; or

(2) obtaining the patent rights to such an organism for the purposes of commercial exploitation of that organism.

END

