

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4812

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, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2002

Mr. KUCINICH (for himself, Mr. SANDERS, Ms. MCKINNEY, Mr. PALLONE, Mrs. MINK of Hawaii, Ms. CARSON of Indiana, Mr. DEFAZIO, Mr. GUTIERREZ, Mr. NADLER, Mr. OLVER, Mr. UDALL of New Mexico, Ms. VELÁZQUEZ, Ms. WATERS, Ms. WOOLSEY, Mr. JACKSON of Illinois, Ms. WATSON of California, Mr. RODRIGUEZ, Ms. BERKLEY, Mr. OWENS, Ms. SOLIS, Mr. HINCHEY, and Ms. LEE) introduced the following bill; which was referred to the Committee on Agriculture

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## 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, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Genetically Engineered Crop and Animal Farmer Protec-  
4 tion Act of 2002”.

5 (b) TABLE OF CONTENTS.—The table of contents of  
6 this Act is as follows:

- Sec. 1. Short title; table of contents; findings.
- Sec. 2. Definitions.
- Sec. 3. Information requirements regarding sale of genetically engineered seeds, plants, and animals.
- Sec. 4. Contract limitations regarding sale of genetically engineered seeds, plants, and animals.
- Sec. 5. Prevention of noncompetitive practices involving technology fees.
- Sec. 6. Measures to avoid cross pollination involving genetically engineered seeds or plants.
- Sec. 7. Resistance of agricultural pests to certain naturally occurring pesticide; amendment to Federal Insecticide, Fungicide, and Rodenticide Act.
- Sec. 8. Prohibition on labeling certain seeds as non-genetically engineered.
- Sec. 9. Prohibition on certain non-fertile plant seeds.
- Sec. 10. Prohibition on loan discrimination.
- Sec. 11. Civil penalties for violation.
- Sec. 12. Citizen suits.

7 (c) FINDINGS.—Congress finds the following:

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

12 (2) Policies promoted by biotech corporations,  
13 such as patenting of seeds, depriving farmers the  
14 right to save seed, unreasonable seed contracts, and  
15 intrusion into everyday farm operations, have sys-  
16 tematically acted to remove basic farmer rights en-  
17 joyed since the beginning of agriculture and essen-

1 tial for agricultural sustainability and the survival of  
2 family farms.

3 (3) The introduction of genetically engineered  
4 crops has also created obstacles for farmers, includ-  
5 ing the loss of markets and increased liability con-  
6 cerns.

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

9 **SEC. 2. DEFINITIONS.**

10 In this Act:

11 (1) **GENETICALLY ENGINEERED ANIMAL.**—The  
12 term “genetically engineered animal” means an ani-  
13 mal that contains a genetically engineered material  
14 or was produced with a genetically engineered mate-  
15 rial. An animal shall be considered to contain a ge-  
16 netically engineered material or to have been pro-  
17 duced with a genetically engineered material if the  
18 animal has been injected or otherwise treated with  
19 a genetically engineered material or is the offspring  
20 of an animal that has been so injected or treated.

21 (2) **GENETICALLY ENGINEERED PLANT.**—The  
22 term “genetically engineered plant” means a plant  
23 that contains a genetically engineered material or  
24 was produced from a genetically engineered seed. A  
25 plant shall be considered to contain a genetically en-

1       gineered material if the plant has been injected or  
2       otherwise treated with a genetically engineered mate-  
3       rial (except that the use of manure as a fertilizer for  
4       the plant may not be construed to mean that the  
5       plant is produced with a genetically engineered ma-  
6       terial).

7               (3) GENETICALLY ENGINEERED SEED.—The  
8       term “genetically engineered seed” means a seed  
9       that contains a genetically engineered material or  
10      was produced with a genetically engineered material.  
11      A seed shall be considered to contain a genetically  
12      engineered material or to have been produced with  
13      a genetically engineered material if the seed (or the  
14      plant from which the seed is derived) has been in-  
15      jected or otherwise treated with a genetically engi-  
16      neered material (except that the use of manure as  
17      a fertilizer for the plant may not be construed to  
18      mean that any resulting seeds are produced with a  
19      genetically engineered material).

20              (4) GENETICALLY ENGINEERED MATERIAL.—  
21      The term “genetically engineered material” means  
22      material that has been altered at the molecular or  
23      cellular level by means that are not possible under  
24      natural conditions or processes (including recom-  
25      binant DNA and RNA techniques, cell fusion, micro-

1       encapsulation, macroencapsulation, gene deletion  
2       and doubling, introducing a foreign gene, and chang-  
3       ing the positions of genes), other than a means con-  
4       sisting exclusively of breeding, conjugation, fer-  
5       mentation, hybridization, in vitro fertilization, tissue  
6       culture, or mutagenesis.

7               (5) BIOTECH COMPANY.—The term “biotech  
8       company” means a person engaged in the business  
9       of creating genetically engineered material or obtain-  
10      ing the patent rights to that material for the pur-  
11      poses of commercial exploitation of that material.  
12      The term does not include the employees of such  
13      person.

14              (6) SECRETARY.—The term “Secretary” means  
15      the Secretary of Agriculture.

16 **SEC. 3. INFORMATION REQUIREMENTS REGARDING SALE**  
17                           **OF GENETICALLY ENGINEERED SEEDS,**  
18                           **PLANTS, AND ANIMALS.**

19              (a) FULL DISCLOSURE OF RISKS OF USE.—A biotech  
20      company that sells any genetically engineered animal, ge-  
21      netically engineered plant, or genetically engineered seed  
22      that the biotech company knows, or has reason to believe,  
23      will be used by the purchaser in the United States to  
24      produce an agricultural commodity shall provide written  
25      notice to the purchaser that fully and clearly discloses the

1 possible legal and environmental risks that the use of the  
2 genetically engineered animal, genetically engineered  
3 plant, or genetically engineered seed may pose to the pur-  
4 chaser.

5 (b) EFFECT OF DISCLOSURE.—The provision of writ-  
6 ten notice under subsection (a) regarding the risks of  
7 using a genetically engineered animal, genetically engi-  
8 neered plant, or genetically engineered seed does not re-  
9 lieve the biotech company from any liability that may re-  
10 sult from the release of genetically engineered material  
11 into the environment. The receipt of the written notice by  
12 the purchaser shall not be construed to create any liability  
13 on the purchaser.

14 (c) RULEMAKING.—The Secretary shall issue such  
15 rules as may be necessary to implement and enforce this  
16 section.

17 **SEC. 4. CONTRACT LIMITATIONS REGARDING SALE OF GE-**  
18 **NETICALLY ENGINEERED SEEDS, PLANTS,**  
19 **AND ANIMALS.**

20 (a) CERTAIN CONTRACT TERMS AND LIMITATIONS  
21 UNENFORCEABLE.—If a contract for the sale of a geneti-  
22 cally engineered animal, genetically engineered plant, or  
23 genetically engineered seed to a purchaser for use in agri-  
24 cultural production contains a provision described in sub-  
25 section (b), the provision is hereby declared to be against

1 public policy and therefore void and unenforceable as a  
2 matter of law.

3 (b) PROHIBITED TERMS AND LIMITATIONS.—The  
4 provisions referred to in subsection (a) are any of the fol-  
5 lowing:

6 (1) In the case of a sale of genetically engi-  
7 neered plants or genetically engineered seeds, a pro-  
8 vision that prohibits the purchaser from retaining a  
9 portion of the harvested crop for future crop plant-  
10 ing by the purchaser or that charges a fee to retain  
11 a portion of the harvested crop for future crop  
12 planting.

13 (2) A provision that limits the ability of the  
14 purchaser to recover damages from the biotech com-  
15 pany for a genetically engineered animal, genetically  
16 engineered plant, or genetically engineered seed that  
17 does not perform as advertised.

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

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

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

1           (6) A provision that mandates any court of ju-  
2           risdiction for settlement of disputes.

3           (7) A provision that mandates that the pur-  
4           chaser pay liquidated damages of more than a tech-  
5           nology fee or similar fee itself, plus interest.

6           (8) A provision that imposes any unfair condi-  
7           tion upon the purchaser, as determined by the Sec-  
8           retary or a court.

9   **SEC. 5. PREVENTION OF NONCOMPETITIVE PRACTICES IN-**  
10                           **VOLVING TECHNOLOGY FEES.**

11           (a) DISCLOSURE OF TECHNOLOGY FEES.—Any  
12           biotech company that sells a genetically engineered ani-  
13           mal, genetically engineered plant, or genetically engi-  
14           neered seed for use in agricultural production in the  
15           United States shall notify the Secretary, at such times and  
16           in such manner as the Secretary shall require, of—

17                   (1) the nature and amount of any technology,  
18                   nonproduction, royalty, or similar fees collected by  
19                   the biotech company in each country where that ge-  
20                   netically engineered animal, plant, or seed is mar-  
21                   keted, and

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

1 (b) PROHIBITION ON NONCOMPETITIVE PRAC-  
2 TICES.—A biotech company that sells a genetically engi-  
3 neered animal, genetically engineered plant, or genetically  
4 engineered seed for use in agricultural production in the  
5 United States may not charge higher technology, non-  
6 production, royalty, or similar fees for sales of the geneti-  
7 cally engineered animal, plant, or seed in the United  
8 States than in other countries in which the genetically en-  
9 gineered animal, plant, or seed is sold.

10 (c) PUBLICATION OF DATA.—The Secretary shall  
11 publish all data received under subsection (a)(1) every six  
12 months in an electronic format and in the Federal Reg-  
13 ister.

14 **SEC. 6. MEASURES TO AVOID CROSS POLLINATION INVOLV-**  
15 **ING GENETICALLY ENGINEERED SEEDS OR**  
16 **PLANTS.**

17 (a) DESIGNATION OF PREDOMINATELY OUTCROSSED  
18 POLLINATORS.—The Secretary shall determine which  
19 plants are predominately outcrossed pollinators and make  
20 such information available to persons who sell or purchase  
21 such plants or the seeds of such plants for use in agricul-  
22 tural production.

23 (b) MINIMIZING THE NEGATIVE EFFECTS OF PRE-  
24 DOMINATELY OUTCROSSED POLLINATORS.—The Sec-  
25 retary shall issue rules to require effective mitigation

1 strategies for any crop that is a predominately outcrossed  
2 pollinator.

3 (c) PROVIDING INSTRUCTIONS TO AVOID CROSS POL-  
4 LINATION.—The seller of any genetically engineered plant  
5 or genetically engineered seed that has been identified as  
6 a predominately outcrossed pollinator shall provide written  
7 instructions to each purchaser of the plants or seeds re-  
8 garding how to plant and cultivate the plants or seeds so  
9 as to avoid cross contamination.

10 **SEC. 7. RESISTANCE OF AGRICULTURAL PESTS TO CER-**  
11 **TAIN NATURALLY OCCURRING PESTICIDE;**  
12 **AMENDMENT TO FEDERAL INSECTICIDE,**  
13 **FUNGICIDE, AND RODENTICIDE ACT.**

14 Section 3(c) of the Federal Insecticide, Fungicide,  
15 and Rodenticide Act (7 U.S.C. 136a(c)) is amended by  
16 adding at the end the following subsection:

17 “(11) BT RESISTANCE REGARDING PLANT-IN-  
18 CORPORATED PESTICIDES.—

19 “(A) Not later than six months after the  
20 date of enactment of this paragraph, the Ad-  
21 ministrators, in consultation with the advisory  
22 panel established under subparagraph (D), shall  
23 establish the best achievable resistance plan for  
24 plant-incorporated pesticides engineered to in-  
25 clude toxins derived from the bacterium Bacil-

1           lus thuringiensis (which bacterium is referred to  
2           in this paragraph as ‘Bt’).

3           “(B) Once the best achievable resistance  
4           plan is established under subparagraph (A), the  
5           Administrator shall revoke all Bt registrations  
6           that are not in compliance with the plan and  
7           may not issue new registrations unless the ap-  
8           plicant has achieved the plan.

9           “(C) If pursuant to subparagraph (A) the  
10          Administrator determines that plant-incor-  
11          porated Bt pesticides may have an unreasonable  
12          adverse effect on the environment by facilitating  
13          the development of Bt-toxin resistance in pests,  
14          or that the review has been inconclusive on  
15          whether the pesticide facilitates such resistance,  
16          the Administrator shall take such actions under  
17          this Act as may be necessary to significantly re-  
18          duce the extent to which such pesticides are  
19          used.

20          “(D) Before establishing the best achiev-  
21          able resistance plan under subparagraph (A),  
22          the Administrator shall, in accordance with pro-  
23          cedures under section 25(d), establish an advi-  
24          sory panel to provide advice to the Adminis-

1           trator on scientific matters involved in the re-  
2           view.

3                   “(E) For purposes of this paragraph, the  
4           term ‘plant-incorporated Bt pesticide’ means a  
5           plant-incorporated pesticide described in sub-  
6           paragraph (A).”.

7   **SEC. 8. PROHIBITION ON LABELING CERTAIN SEEDS AS**  
8                   **NON-GENETICALLY ENGINEERED.**

9           A seed company or other person may not sell, or offer  
10   for sale, seeds for planting that are labeled as non-geneti-  
11   cally engineered or otherwise represented as not con-  
12   taining genetically engineered material if the Secretary  
13   finds that any sample of the seeds contains genetically en-  
14   gineered material.

15   **SEC. 9. PROHIBITION ON CERTAIN NON-FERTILE PLANT**  
16                   **SEEDS.**

17           Notwithstanding any other provision of law, effective  
18   45 days after the date of the enactment of this Act, a  
19   person may not manufacture, distribute, sell, plant, or  
20   otherwise use any seed that is genetically engineered to  
21   produce a plant whose seeds are not fertile or are rendered  
22   infertile by the application of an external chemical inducer.

23   **SEC. 10. PROHIBITION ON LOAN DISCRIMINATION.**

24           A financial institution may not discriminate against  
25   an agricultural producer that refuses to use genetically en-

1 gineered plants or animals or add as condition to a loan  
2 the requirement that the producer use genetically engi-  
3 neered plants or animals.

4 **SEC. 11. CIVIL PENALTIES FOR VIOLATION.**

5 (a) **AUTHORITY TO ACCESS PENALTIES.**—The Sec-  
6 retary may assess, by written order, a civil penalty against  
7 a biotech company or other person that violates a provi-  
8 sion of this Act, including a regulation promulgated or  
9 order issued under this Act. Each violation, and each day  
10 during which a violation continues, shall be a separate of-  
11 fense.

12 (b) **AMOUNT AND FACTORS IN ACCESSING PEN-**  
13 **ALTIES.**—The maximum amount that may be accessed  
14 under this section for a violation may not exceed  
15 \$100,000. In determining the amount of the civil penalty,  
16 the Secretary shall take into account—

- 17 (1) the gravity of the violation;  
18 (2) the degree of culpability;  
19 (3) the size and type of the business; and  
20 (4) any history of prior offenses under this Act  
21 or other laws administered by the Secretary.

22 (c) **NOTICE AND OPPORTUNITY FOR HEARING.**—The  
23 Secretary shall not assess a civil penalty under this section  
24 against a biotech company or other person unless the com-  
25 pany is given notice and opportunity for a hearing on the

1 record before the Secretary in accordance with sections  
2 554 and 556 of title 5, United States Code.

3 (d) JUDICIAL REVIEW.—(1) An order assessing a  
4 civil penalty against a person under subsection (a) may  
5 be reviewed only in accordance with this subsection. The  
6 order shall be final and conclusive unless the person—

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

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

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

18 (e) COLLECTION ACTION FOR FAILURE TO PAY AS-  
19 SESSMENT.—If a person fails to pay a civil penalty after  
20 the order assessing the civil penalty has become final and  
21 unappealable, the Secretary shall refer the matter to the  
22 Attorney General, who shall bring a civil action to recover  
23 the amount of the civil penalty in United States district  
24 court. In the collection action, the validity and appro-

1 priateness of the order of the Secretary imposing the civil  
2 penalty shall not be subject to review.

3 **SEC. 12. CITIZEN SUITS.**

4 (a) IN GENERAL.—Except as provided in subsection  
5 (c), any person may commence a civil action in an appro-  
6 priate district court of the United States against—

7 (1) a person who has introduced a genetically  
8 engineered organism into the environment without  
9 approval under this Act;

10 (2) the Secretary, where there is alleged a fail-  
11 ure of the Secretary to perform any act or duty  
12 under this Act that is the responsibility of the Sec-  
13 retary and is not discretionary; or

14 (3) the head of another Federal agency, if there  
15 is alleged a failure of the agency head to perform  
16 any act or duty under this Act that is the responsi-  
17 bility of the agency head and is not discretionary.

18 (b) RELIEF.—In a civil action under this section, the  
19 district court involved may, as the case may be—

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

22 (2) order the Secretary or the agency head to  
23 perform the act or duty referred to in the complaint.

24 (c) LIMITATIONS.—

1           (1) NOTICE TO SECRETARY.—A civil action may  
2 not be commenced under subsection (a)(1) prior to  
3 60 days after the plaintiff has provided to the Sec-  
4 retary notice of the violation involved.

5           (2) RELATION TO ACTIONS OF SECRETARY.—A  
6 civil action may not be commenced under subsection  
7 (a)(1) against the Secretary if the Secretary has  
8 commenced and is diligently prosecuting a civil or  
9 criminal action in a district court of the United  
10 States to enforce compliance with the applicable pro-  
11 visions referred to in the complaint.

12          (d) RIGHT OF SECRETARY TO INTERVENE.—In any  
13 civil action under subsection (a)(1), the Secretary , if not  
14 a party, may intervene as a matter of right.

15          (e) AWARD OF COSTS; FILING OF BOND.—In a civil  
16 action under subsection (a), the district court involved  
17 may award costs of litigation (including reasonable attor-  
18 ney and expert witness fees) to any party whenever the  
19 court determines such an award is appropriate. The court  
20 may, if a temporary restraining order or preliminary in-  
21 junction is sought, require the filing of a bond or equiva-  
22 lent security in accordance with the Federal Rules of Civil  
23 Procedure.

24          (f) SAVINGS PROVISION.—This section does not re-  
25 strict any right that a person (or class of persons) may

1 have under any statute or common law to seek enforce-  
2 ment of the provisions of this Act, or to seek any other  
3 relief (including relief against the Secretary or the head  
4 of another Federal agency).

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