

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2008

Mr. KUCINICH (for himself, Mr. SHAYS, Ms. SCHAKOWSKY, Mr. GRIJALVA, Ms. LEE, Ms. LINDA T. SÁNCHEZ 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

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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, to assign liability for injury caused by genetically engineered organisms, 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; TABLE OF CONTENTS.**

4        (a) **SHORT TITLE.**—This Act may be cited as the  
 5 “Genetically Engineered Technology Farmer Protection  
 6 Act”.

7        (b) **TABLE OF CONTENTS.**—The table of contents for  
 8 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 pes-  
 ticide; 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.

1 **TITLE I—GENETICALLY ENGI-**  
2 **NEERED CROP AND ANIMAL**  
3 **FARMER PROTECTION**

4 **SEC. 101. SHORT TITLE; FINDINGS.**

5 (a) **SHORT TITLE.**—This title may be cited as the  
6 “Genetically Engineered Crop and Animal Farmer Protec-  
7 tion Act”.

8 (b) **FINDINGS.**—Congress finds the following:

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

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

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

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

3 **SEC. 102. DEFINITIONS.**

4           In this title:

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

15          (2) GENETICALLY ENGINEERED PLANT.—The  
16          term “genetically engineered plant” means a plant  
17          that contains a genetically engineered material or  
18          was produced from a genetically engineered seed. A  
19          plant shall be considered to contain a genetically en-  
20          gineered material if the plant has been injected or  
21          otherwise treated with a genetically engineered mate-  
22          rial (except that the use of manure as a fertilizer for  
23          the plant may not be construed to mean that the  
24          plant is produced with a genetically engineered ma-  
25          terial).

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

14           (4) GENETICALLY ENGINEERED MATERIAL.—  
15 The term “genetically engineered material” means  
16 material that has been altered at the molecular or  
17 cellular level by means that are not possible under  
18 natural conditions or processes (including recom-  
19 binant DNA and RNA techniques, cell fusion, micro-  
20 encapsulation, macroencapsulation, gene deletion  
21 and doubling, introducing a foreign gene, and chang-  
22 ing the positions of genes), other than a means con-  
23 sisting exclusively of breeding, conjugation, fer-  
24 mentation, hybridization, in vitro fertilization, tissue  
25 culture, or mutagenesis.

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

8           (6) SECRETARY.—The term “Secretary” means  
9           the Secretary of Agriculture.

10 **SEC. 103. INFORMATION REQUIREMENTS REGARDING SALE**  
11                           **OF GENETICALLY ENGINEERED SEEDS,**  
12                           **PLANTS, AND ANIMALS.**

13           (a) FULL DISCLOSURE OF RISKS OF USE.—A biotech  
14           company that sells any genetically engineered animal, ge-  
15           netically engineered plant, or genetically engineered seed  
16           that the biotech company knows, or has reason to believe,  
17           will be used by the purchaser in the United States to  
18           produce an agricultural commodity shall provide written  
19           notice to the purchaser that fully and clearly discloses the  
20           possible legal and environmental risks that the use of the  
21           genetically engineered animal, genetically engineered  
22           plant, or genetically engineered seed may pose to the pur-  
23           chaser.

24           (b) EFFECT OF DISCLOSURE.—The provision of writ-  
25           ten notice under subsection (a) regarding the risks of

1 using a genetically engineered animal, genetically engi-  
2 neered plant, or genetically engineered seed does not re-  
3 lieve the biotech company from any liability that may re-  
4 sult from the release of genetically engineered material  
5 into the environment. The receipt of the written notice by  
6 the purchaser shall not be construed to create any liability  
7 on the purchaser.

8 (c) RULEMAKING.—The Secretary shall issue such  
9 rules as may be necessary to implement and enforce this  
10 section.

11 **SEC. 104. CONTRACT LIMITATIONS REGARDING SALE OF**  
12 **GENETICALLY ENGINEERED SEEDS, PLANTS,**  
13 **AND ANIMALS.**

14 (a) CERTAIN CONTRACT TERMS AND LIMITATIONS  
15 UNENFORCEABLE.—If a contract for the sale of a geneti-  
16 cally engineered animal, genetically engineered plant, or  
17 genetically engineered seed to a purchaser for use in agri-  
18 cultural production contains a provision described in sub-  
19 section (b), the provision is hereby declared to be against  
20 public policy and therefore void and unenforceable as a  
21 matter of law.

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

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

8           (2) A provision that limits the ability of the  
9           purchaser to recover damages from the biotech com-  
10          pany for a genetically engineered animal, genetically  
11          engineered plant, or genetically engineered seed that  
12          does not perform as advertised.

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

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

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

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

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

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

4 **SEC. 105. PREVENTION OF NONCOMPETITIVE PRACTICES**  
5 **INVOLVING TECHNOLOGY FEES.**

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

12           (1) the nature and amount of any technology,  
13 nonproduction, royalty, or similar fees collected by  
14 the biotech company in each country where that ge-  
15 netically engineered animal, plant, or seed is mar-  
16 keted, and

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

21           (b) **PROHIBITION ON NONCOMPETITIVE PRAC-**  
22 **TICES.**—A biotech company that sells a genetically engi-  
23 neered animal, genetically engineered plant, or genetically  
24 engineered seed for use in agricultural production in the  
25 United States may not charge higher technology, non-



1 fied as a predominately outcrossed pollinator shall provide  
2 written instructions to each purchaser of the plants or  
3 seeds regarding how to plant and cultivate the plants or  
4 seeds so as to avoid cross contamination.

5 **SEC. 107. RESISTANCE OF AGRICULTURAL PESTS TO CER-**  
6 **TAIN NATURALLY OCCURRING PESTICIDE;**  
7 **AMENDMENT TO FEDERAL INSECTICIDE,**  
8 **FUNGICIDE, AND RODENTICIDE ACT.**

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

12 “(11) BT RESISTANCE REGARDING PLANT-IN-  
13 CORPORATED PESTICIDES.—

14 “(A) Not later than six months after the  
15 date of enactment of this paragraph, the Ad-  
16 ministrator, in consultation with the advisory  
17 panel established under subparagraph (D), shall  
18 establish the best achievable resistance plan for  
19 plant-incorporated pesticides engineered to in-  
20 clude toxins derived from the bacterium *Bacil-*  
21 *lus thuringiensis* (which bacterium is referred to  
22 in this paragraph as ‘Bt’).

23 “(B) Once the best achievable resistance  
24 plan is established under subparagraph (A), the  
25 Administrator shall revoke all Bt registrations

1 that are not in compliance with the plan and  
2 may not issue new registrations unless the ap-  
3 plicant has achieved the plan.

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

15 “(D) Before establishing the best achiev-  
16 able resistance plan under subparagraph (A),  
17 the Administrator shall, in accordance with pro-  
18 cedures under section 25(d), establish an advi-  
19 sory panel to provide advice to the Adminis-  
20 trator on scientific matters involved in the re-  
21 view.

22 “(E) For purposes of this paragraph, the  
23 term ‘plant-incorporated Bt pesticide’ means a  
24 plant-incorporated pesticide described in sub-  
25 paragraph (A).”.

1 **SEC. 108. PROHIBITION ON LABELING CERTAIN SEEDS AS**  
2 **NON-GENETICALLY ENGINEERED.**

3 A seed company or other person may not sell, or offer  
4 for sale, seeds for planting that are labeled as non-geneti-  
5 cally engineered or otherwise represented as not con-  
6 taining genetically engineered material if the Secretary  
7 finds that any sample of the seeds contains genetically en-  
8 gineered material.

9 **SEC. 109. PROHIBITION ON CERTAIN NON-FERTILE PLANT**  
10 **SEEDS.**

11 Notwithstanding any other provision of law, effective  
12 45 days after the date of the enactment of this title, a  
13 person may not manufacture, distribute, sell, plant, or  
14 otherwise use any seed that is genetically engineered to  
15 produce a plant whose seeds are not fertile or are rendered  
16 infertile by the application of an external chemical inducer.

17 **SEC. 110. PROHIBITION ON LOAN DISCRIMINATION.**

18 A financial institution may not discriminate against  
19 an agricultural producer that refuses to use genetically en-  
20 gineered plants or animals or add as condition to a loan  
21 the requirement that the producer use genetically engi-  
22 neered plants or animals.

23 **SEC. 111. CIVIL PENALTIES FOR VIOLATION.**

24 (a) **AUTHORITY TO ASSESS PENALTIES.**—The Sec-  
25 retary may assess, by written order, a civil penalty against  
26 a biotech company or other person that violates a provi-

1 sion of this title, including a regulation promulgated or  
2 order issued under this title. Each violation, and each day  
3 during which a violation continues, shall be a separate of-  
4 fense.

5 (b) AMOUNT AND FACTORS IN ASSESSING PEN-  
6 ALTIES.—The maximum amount that may be assessed  
7 under this section for a violation may not exceed  
8 \$100,000. In determining the amount of the civil penalty,  
9 the Secretary shall take into account—

- 10 (1) the gravity of the violation;
- 11 (2) the degree of culpability;
- 12 (3) the size and type of the business; and
- 13 (4) any history of prior offenses under this title  
14 or other laws administered by the Secretary.

15 (c) NOTICE AND OPPORTUNITY FOR HEARING.—The  
16 Secretary shall not assess a civil penalty under this section  
17 against a biotech company or other person unless the com-  
18 pany is given notice and opportunity for a hearing on the  
19 record before the Secretary in accordance with sections  
20 554 and 556 of title 5, United States Code.

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

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

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

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

12          (e) **COLLECTION ACTION FOR FAILURE TO PAY AS-**  
13          **SESSMENT.**—If a person fails to pay a civil penalty after  
14          the order assessing the civil penalty has become final and  
15          unappealable, the Secretary shall refer the matter to the  
16          Attorney General, who shall bring a civil action to recover  
17          the amount of the civil penalty in United States district  
18          court. In the collection action, the validity and appro-  
19          priateness of the order of the Secretary imposing the civil  
20          penalty shall not be subject to review.

21          **SEC. 112. CITIZEN SUITS.**

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

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

4           (2) the Secretary, where there is alleged a fail-  
5 ure of the Secretary to perform any act or duty  
6 under this title that is the responsibility of the Sec-  
7 retary and is not discretionary; or

8           (3) the head of another Federal agency, if there  
9 is alleged a failure of the agency head to perform  
10 any act or duty under this title that is the responsi-  
11 bility of the agency head and is not discretionary.

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

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

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

18       (c) LIMITATIONS.—

19           (1) NOTICE TO SECRETARY.—A civil action may  
20 not be commenced under subsection (a)(1) prior to  
21 60 days after the plaintiff has provided to the Sec-  
22 retary notice of the violation involved.

23           (2) RELATION TO ACTIONS OF SECRETARY.—A  
24 civil action may not be commenced under subsection  
25 (a)(1) against the Secretary if the Secretary has

1 commenced and is diligently prosecuting a civil or  
2 criminal action in a district court of the United  
3 States to enforce compliance with the applicable pro-  
4 visions referred to in the complaint.

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

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

17 (f) SAVINGS PROVISION.—This section does not re-  
18 strict any right that a person (or class of persons) may  
19 have under any statute or common law to seek enforce-  
20 ment of the provisions of this title, or to seek any other  
21 relief (including relief against the Secretary or the head  
22 of another Federal agency).

1 **TITLE II—GENETICALLY ENGI-**  
2 **NEERED ORGANISM LIABIL-**  
3 **ITY**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “Genetically Engi-  
6 neered Organism Liability Act of 2007”.

7 **SEC. 202. FINDINGS.**

8 The Congress finds the following:

9 (1) The negative consequences of genetically en-  
10 gineered crops may impact farmers who grow these  
11 crops, neighbor farmers who do not grow these  
12 crops, and consumers.

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

16 (3) Farmers may suffer from crop failures,  
17 neighbor and nearby farmers may suffer from cross  
18 pollination, increased insect resistance, and un-  
19 wanted volunteer genetically engineered plants, and  
20 consumers may suffer from health and environ-  
21 mental impacts.

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

1 **SEC. 203. LIABILITY.**

2 (a) CAUSE OF ACTION.—A biotech company is liable  
3 to any party injured by the release of a genetically engi-  
4 neered organism into the environment if that injury re-  
5 sults from that genetic engineering. The prevailing plain-  
6 tiff in an action under this subsection may recover reason-  
7 able attorney’s fees and other litigation expenses as a part  
8 of the costs.

9 (b) INDEMNITY.—For the purposes of subsection (a),  
10 the term “injury” includes any liability of a person who  
11 uses that organism in accordance with applicable Federal  
12 and other law, if that liability arises from that use.

13 (c) NOT WAIVABLE.—The liability created by sub-  
14 section (a) may not be waived or otherwise avoided by con-  
15 tract.

16 (d) DEFINITION.—As used in this section, the term  
17 “biotech company” means a person—

18 (1) engaged in the business of genetically engi-  
19 neering an organism; or

20 (2) obtaining the patent rights to such an orga-  
21 nism for the purposes of commercial exploitation of  
22 that organism.

○