

111TH CONGRESS
2^D SESSION

H. R. 5579

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

JUNE 23, 2010

Mr. KUCINICH (for himself, Mr. DEFAZIO, Mr. FRANK of Massachusetts, Mr. GRIJALVA, Mr. STARK, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Energy and Commerce and the 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.

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.**

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

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 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.

7 **TITLE I—GENETICALLY ENGI-**
 8 **NEERED CROP AND ANIMAL**
 9 **FARMER PROTECTION**

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

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

1 (b) FINDINGS.—Congress finds the following:

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

6 (2) Policies promoted by biotech corporations,
7 such as patenting of seeds, depriving farmers the
8 right to save seed, unreasonable seed contracts, and
9 intrusion into everyday farm operations, have sys-
10 tematically acted to remove basic farmer rights en-
11 joyed since the beginning of agriculture and essen-
12 tial for agricultural sustainability and the survival of
13 family farms.

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

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

20 **SEC. 102. DEFINITIONS.**

21 In this title:

22 (1) GENETICALLY ENGINEERED ANIMAL.—The
23 term “genetically engineered animal” means an ani-
24 mal that contains a genetically engineered material
25 or was produced with a genetically engineered mate-

1 rial. An animal shall be considered to contain a ge-
2 netically engineered material or to have been pro-
3 duced with a genetically engineered material if the
4 animal has been injected or otherwise treated with
5 a genetically engineered material or is the offspring
6 of an animal that has been so injected or treated.

7 (2) GENETICALLY ENGINEERED PLANT.—The
8 term “genetically engineered plant” means a plant
9 that contains a genetically engineered material or
10 was produced from a genetically engineered seed. A
11 plant shall be considered to contain a genetically en-
12 gineered material if the plant has been injected or
13 otherwise treated with a genetically engineered mate-
14 rial (except that the use of manure as a fertilizer for
15 the plant may not be construed to mean that the
16 plant is produced with a genetically engineered ma-
17 terial).

18 (3) GENETICALLY ENGINEERED SEED.—The
19 term “genetically engineered seed” means a seed
20 that contains a genetically engineered material or
21 was produced with a genetically engineered material.
22 A seed shall be considered to contain a genetically
23 engineered material or to have been produced with
24 a genetically engineered material if the seed (or the
25 plant from which the seed is derived) has been in-

1 jected or otherwise treated with a genetically engi-
2 neered material (except that the use of manure as
3 a fertilizer for the plant may not be construed to
4 mean that any resulting seeds are produced with a
5 genetically engineered material).

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

18 (5) BIOTECH COMPANY.—The term “biotech
19 company” means a person engaged in the business
20 of creating genetically engineered material or obtain-
21 ing the patent rights to that material for the pur-
22 poses of commercial exploitation of that material.
23 The term does not include the employees of such
24 person.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of Agriculture.

3 **SEC. 103. INFORMATION REQUIREMENTS REGARDING SALE**
4 **OF GENETICALLY ENGINEERED SEEDS,**
5 **PLANTS, AND ANIMALS.**

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

17 (b) EFFECT OF DISCLOSURE.—The provision of writ-
18 ten notice under subsection (a) regarding the risks of
19 using a genetically engineered animal, genetically engi-
20 neered plant, or genetically engineered seed does not re-
21 lieve the biotech company from any liability that may re-
22 sult from the release of genetically engineered material
23 into the environment. The receipt of the written notice by
24 the purchaser shall not be construed to create any liability
25 on the purchaser.

1 (c) RULEMAKING.—The Secretary shall issue such
2 rules as may be necessary to implement and enforce this
3 section.

4 **SEC. 104. CONTRACT LIMITATIONS REGARDING SALE OF**
5 **GENETICALLY ENGINEERED SEEDS, PLANTS,**
6 **AND ANIMALS.**

7 (a) CERTAIN CONTRACT TERMS AND LIMITATIONS
8 UNENFORCEABLE.—If a contract for the sale of a geneti-
9 cally engineered animal, genetically engineered plant, or
10 genetically engineered seed to a purchaser for use in agri-
11 cultural production contains a provision described in sub-
12 section (b), the provision is hereby declared to be against
13 public policy and therefore void and unenforceable as a
14 matter of law.

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

18 (1) In the case of a sale of genetically engi-
19 neered plants or genetically engineered seeds, a pro-
20 vision that prohibits the purchaser from retaining a
21 portion of the harvested crop for future crop plant-
22 ing by the purchaser or that charges a fee to retain
23 a portion of the harvested crop for future crop
24 planting.

1 (2) A provision that limits the ability of the
2 purchaser to recover damages from the biotech com-
3 pany for a genetically engineered animal, genetically
4 engineered plant, or genetically engineered seed that
5 does not perform as advertised.

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

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

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

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

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

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

22 **SEC. 105. PREVENTION OF NONCOMPETITIVE PRACTICES**
23 **INVOLVING TECHNOLOGY FEES.**

24 (a) **DISCLOSURE OF TECHNOLOGY FEES.**—Any
25 biotech company that sells a genetically engineered ani-

1 mal, genetically engineered plant, or genetically engi-
2 neered seed for use in agricultural production in the
3 United States shall notify the Secretary, at such times and
4 in such manner as the Secretary shall require, of—

5 (1) the nature and amount of any technology,
6 nonproduction, royalty, or similar fees collected by
7 the biotech company in each country where that ge-
8 netically engineered animal, plant, or seed is mar-
9 keted, and

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

14 (b) PROHIBITION ON NONCOMPETITIVE PRAC-
15 TICES.—A biotech company that sells a genetically engi-
16 neered animal, genetically engineered plant, or genetically
17 engineered seed for use in agricultural production in the
18 United States may not charge higher technology, non-
19 production, royalty, or similar fees for sales of the geneti-
20 cally engineered animal, plant, or seed in the United
21 States than in other countries in which the genetically en-
22 gineered animal, plant, or seed is sold.

23 (c) PUBLICATION OF DATA.—The Secretary shall
24 publish all data received under subsection (a)(1) every six

1 months in an electronic format and in the Federal Reg-
2 ister.

3 **SEC. 106. MEASURES TO AVOID CROSS POLLINATION IN-**
4 **VOLVING GENETICALLY ENGINEERED SEEDS**
5 **OR PLANTS.**

6 (a) DESIGNATION OF PREDOMINATELY OUTCROSSED
7 POLLINATORS.—The Secretary shall determine which
8 plants are predominately outcrossed pollinators and make
9 such information available to persons who sell or purchase
10 such plants or the seeds of such plants for use in agricul-
11 tural production.

12 (b) MINIMIZING THE NEGATIVE EFFECTS OF PRE-
13 DOMINATELY OUTCROSSED POLLINATORS.—The Sec-
14 retary shall issue rules to require effective mitigation
15 strategies for any crop that is a predominately outcrossed
16 pollinator.

17 (c) PROVIDING INSTRUCTIONS TO AVOID CROSS
18 POLLINATION.—The seller of any genetically engineered
19 plant or genetically engineered seed that has been identi-
20 fied as a predominately outcrossed pollinator shall provide
21 written instructions to each purchaser of the plants or
22 seeds regarding how to plant and cultivate the plants or
23 seeds so as to avoid cross contamination.

1 **SEC. 107. RESISTANCE OF AGRICULTURAL PESTS TO CER-**
2 **TAIN NATURALLY OCCURRING PESTICIDE;**
3 **AMENDMENT TO FEDERAL INSECTICIDE,**
4 **FUNGICIDE, AND RODENTICIDE ACT.**

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

8 “(11) BT RESISTANCE REGARDING PLANT-IN-
9 CORPORATED PESTICIDES.—

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

19 “(B) Once the best achievable resistance
20 plan is established under subparagraph (A), the
21 Administrator shall revoke all Bt registrations
22 that are not in compliance with the plan and
23 may not issue new registrations unless the ap-
24 plicant has achieved the plan.

25 “(C) If pursuant to subparagraph (A) the
26 Administrator determines that plant-incor-

1 porated Bt pesticides may have an unreasonable
2 adverse effect on the environment by facilitating
3 the development of Bt-toxin resistance in pests,
4 or that the review has been inconclusive on
5 whether the pesticide facilitates such resistance,
6 the Administrator shall take such actions under
7 this Act as may be necessary to significantly re-
8 duce the extent to which such pesticides are
9 used.

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

17 “(E) For purposes of this paragraph, the
18 term ‘plant-incorporated Bt pesticide’ means a
19 plant-incorporated pesticide described in sub-
20 paragraph (A).”.

21 **SEC. 108. PROHIBITION ON LABELING CERTAIN SEEDS AS**
22 **NON-GENETICALLY ENGINEERED.**

23 A seed company or other person may not sell, or offer
24 for sale, seeds for planting that are labeled as non-geneti-
25 cally engineered or otherwise represented as not con-

1 taining genetically engineered material if the Secretary
2 finds that any sample of the seeds contains genetically en-
3 gineered material.

4 **SEC. 109. PROHIBITION ON CERTAIN NON-FERTILE PLANT**
5 **SEEDS.**

6 Notwithstanding any other provision of law, effective
7 45 days after the date of the enactment of this title, a
8 person may not manufacture, distribute, sell, plant, or
9 otherwise use any seed that is genetically engineered to
10 produce a plant whose seeds are not fertile or are rendered
11 infertile by the application of an external chemical inducer.

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

13 A financial institution may not discriminate against
14 an agricultural producer that refuses to use genetically en-
15 gineered plants or animals or add as condition to a loan
16 the requirement that the producer use genetically engi-
17 neered plants or animals.

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

19 (a) **AUTHORITY TO ASSESS PENALTIES.**—The Sec-
20 retary may assess, by written order, a civil penalty against
21 a biotech company or other person that violates a provi-
22 sion of this title, including a regulation promulgated or
23 order issued under this title. Each violation, and each day
24 during which a violation continues, shall be a separate of-
25 fense.

1 (b) AMOUNT AND FACTORS IN ASSESSING PEN-
2 ALTIES.—The maximum amount that may be assessed
3 under this section for a violation may not exceed
4 \$100,000. In determining the amount of the civil penalty,
5 the Secretary shall take into account—

6 (1) the gravity of the violation;

7 (2) the degree of culpability;

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

9 (4) any history of prior offenses under this title
10 or other laws administered by the Secretary.

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

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

21 (A) not later than 30 days after the effective
22 date of the order, files a petition for judicial review
23 in the United States court of appeals for the circuit
24 in which the person resides or has its principal place

1 of business or in the United States Court of Appeals
2 for the District of Columbia; and

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

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

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

17 **SEC. 112. CITIZEN SUITS.**

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

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

24 (2) the Secretary, where there is alleged a fail-
25 ure of the Secretary to perform any act or duty

1 under this title that is the responsibility of the Sec-
2 retary and is not discretionary; or

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

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

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

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

13 (c) LIMITATIONS.—

14 (1) NOTICE TO SECRETARY.—A civil action may
15 not be commenced under subsection (a)(1) prior to
16 60 days after the plaintiff has provided to the Sec-
17 retary notice of the violation involved.

18 (2) RELATION TO ACTIONS OF SECRETARY.—A
19 civil action may not be commenced under subsection
20 (a)(1) against the Secretary if the Secretary has
21 commenced and is diligently prosecuting a civil or
22 criminal action in a district court of the United
23 States to enforce compliance with the applicable pro-
24 visions referred to in the complaint.

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

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

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

19 **TITLE II—GENETICALLY ENGI-**
20 **NEERED ORGANISM LIABIL-**
21 **ITY**

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Genetically Engi-
24 neered Organism Liability Act of 2010”.

1 **SEC. 202. FINDINGS.**

2 The Congress finds the following:

3 (1) The negative consequences of genetically en-
4 gineered crops may impact farmers who grow these
5 crops, neighbor farmers who do not grow these
6 crops, and consumers.

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

10 (3) Farmers may suffer from crop failures,
11 neighbor and nearby farmers may suffer from cross
12 pollination, increased insect resistance, and un-
13 wanted volunteer genetically engineered plants, and
14 consumers may suffer from health and environ-
15 mental impacts.

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

19 **SEC. 203. LIABILITY.**

20 (a) CAUSE OF ACTION.—A biotech company is liable
21 to any party injured by the release of a genetically engi-
22 neered organism into the environment if that injury re-
23 sults from that genetic engineering. The prevailing plain-
24 tiff in an action under this subsection may recover reason-
25 able attorney's fees and other litigation expenses as a part
26 of the costs.

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

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

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

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

12 (2) obtaining the patent rights to such an orga-
13 nism for the purposes of commercial exploitation of
14 that organism.

○