

111TH CONGRESS
1ST SESSION

H. R. 3299

To require persons who seek to retain seed harvested from the planting of patented seeds to register with the Secretary of Agriculture and pay fees set by the Secretary for retaining such seed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2009

Ms. KAPTUR introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Ways and Means, 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 require persons who seek to retain seed harvested from the planting of patented seeds to register with the Secretary of Agriculture and pay fees set by the Secretary for retaining such seed, 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 “Seed Availability and
5 Competition Act of 2009”.

1 **SEC. 2. RETAINING PATENTED SEED.**

2 (a) REGISTRATION.—Any person who plants patented
3 seed or seed derived from patented seed may retain seed
4 from the harvest of the planted seed for replanting by that
5 person if that person—

6 (1) submits to the Secretary of Agriculture no-
7 tice, in such form as the Secretary may require, of
8 the type and quantity of seed to be retained and any
9 other information the Secretary determines to be ap-
10 propriate; and

11 (2) pays the fee established by the Secretary
12 pursuant to subsection (b) for the type and quantity
13 of seed retained.

14 (b) FEES.—The Secretary of Agriculture shall estab-
15 lish a fee to be paid by a person pursuant to subsection
16 (a)(2) based on the type and quantity of seed retained.
17 The Secretary shall deposit amounts collected pursuant to
18 subsection (a)(2) in the Patented Seed Fund established
19 under subsection (e)(1).

20 (c) REFUNDS.—The Secretary of Agriculture may re-
21 fund or make an adjustment of the fee paid pursuant to
22 subsection (a)(2) when the person is unable to plant or
23 harvest the retained seed as a result of a natural disaster
24 or related condition and under such other circumstances
25 as the Secretary considers such refund or adjustment ap-
26 propriate.

1 (d) DISTRIBUTIONS.—The Secretary of Agriculture
2 shall pay the collected fees to the appropriate patent hold-
3 ers, at a frequency that the Secretary determines is appro-
4 priate, from the Patented Seed Fund established under
5 subsection (e)(1), taking into consideration the possibility
6 of refunds pursuant to subsection (c).

7 (e) PATENTED SEED FUND.—

8 (1) ESTABLISHMENT.—There is established in
9 the Treasury of the United States a fund to be
10 known as the “Patented Seed Fund”, consisting of
11 such amounts as may be received by the Secretary
12 and deposited into such Fund as provided in this
13 section.

14 (2) ADMINISTRATION.—The Fund shall be ad-
15 ministered by the Secretary of Agriculture and all
16 moneys in the Fund shall be distributed solely by
17 the Secretary in accordance with this section and
18 shall not be distributed or appropriated for any
19 other purpose. Amounts in the Fund are available
20 without further appropriation and until expended to
21 make payments to patent holders.

22 (f) INAPPLICABILITY OF CONTRACTS AND PATENT
23 FEES.—A person who retains seed under subsection (a)
24 from the harvest of patented seed or seed derived from
25 patented seed shall not be bound by any contractual limi-

1 tation on retaining such seed, or by any requirement to
2 pay royalties or licensing or other fees, by reason of the
3 patent, for retaining such seed.

4 (g) DEFINITION.—In this section, the term “patented
5 seed” means seed for which a person holds a valid patent.

6 **SEC. 3. TARIFF ON CERTAIN IMPORTED PRODUCTS.**

7 (a) TARIFF.—In any case in which—

8 (1) genetically modified seed on which royalties
9 or licensing or other fees are charged by the owner
10 of a patent on such seed to persons purchasing the
11 seed in the United States is exported, and

12 (2) no such fees, or a lesser amount of such
13 fees, are charged to purchasers of the exported seed
14 in a foreign country,

15 then there shall be imposed on any product of the exported
16 seed from that foreign country that enters the customs
17 territory of the United States a duty determined by the
18 Secretary of the Treasury, in addition to any duty that
19 otherwise applies, in an amount that recovers the dif-
20 ference between the fees paid by purchasers of the seed
21 in the United States and purchasers of the exported seed
22 in that country.

23 (b) DEPOSIT OF DUTIES.—There shall be deposited
24 in the Patented Seed Fund established under section
25 2(e)(1) the amount of all duties collected under subsection

1 (a) for distribution to the appropriate patent holders in
2 accordance with section 2(d).

3 (c) DEFINITIONS.—In this section—

4 (1) the term “genetically modified seed” means
5 any seed that contains a genetically modified mate-
6 rial, was produced with a genetically modified mate-
7 rial, or is descended from a seed that contained a
8 genetically modified material or was produced with
9 a genetically modified material; and

10 (2) the term “genetically modified material”
11 means material that has been altered at the molec-
12 ular or cellular level by means that are not possible
13 under natural conditions or processes (including re-
14 combinant DNA and RNA techniques, cell fusion,
15 microencapsulation, macroencapsulation, gene dele-
16 tion and doubling, introducing a foreign gene, and
17 changing the positions of genes), other than a means
18 consisting exclusively of breeding, conjugation, fer-
19 mentation, hybridization, in vitro fertilization, tissue
20 culture, or mutagenesis.

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