

103^D CONGRESS
1ST SESSION

S. 1406

To amend the Plant Variety Protection Act to make such Act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

Mr. KERREY (for himself and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Plant Variety Protection Act to make such Act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, 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; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Plant Variety Protection Act Amendments of 1993”.

6 (b) REFERENCES TO PLANT VARIETY PROTECTION
7 ACT.—Except as otherwise expressly provided, whenever

1 in this Act an amendment or repeal is expressed in terms
2 of an amendment to, or repeal of, a section or other provi-
3 sion, the reference shall be considered to be made to a
4 section or other provision of the Plant Variety Protection
5 Act (7 U.S.C. 2321 et seq.).

6 **SEC. 2. DEFINITIONS AND RULES OF CONSTRUCTION.**

7 Section 41 (7 U.S.C. 2401) is amended to read as
8 follows:

9 **“SEC. 41. DEFINITIONS AND RULES OF CONSTRUCTION.**

10 “(a) DEFINITIONS.—As used in this Act:

11 “(1) BASIC SEED.—The term ‘basic seed’
12 means the seed planted to produce certified or com-
13 mercial seed.

14 “(2) BREEDER.—The term ‘breeder’ means the
15 person who directs the final breeding creating a vari-
16 ety or who discovers and develops a variety. If the
17 actions are conducted by an agent on behalf of a
18 principal, the principal, rather than the agent, shall
19 be considered the breeder. The term does not include
20 a person who redevelops or rediscovers a variety the
21 existence of which is publicly known or a matter of
22 common knowledge.

23 “(3) ESSENTIALLY DERIVED VARIETY.—

24 “(A) IN GENERAL.—The term ‘essentially
25 derived variety’ means a variety that—

1 “(i) is predominantly derived from an-
2 other variety (referred to in this paragraph
3 as the ‘initial variety’) or from a variety
4 that is predominantly derived from the ini-
5 tial variety, while retaining the expression
6 of the essential characteristics that result
7 from the genotype or combination of
8 genotypes of the initial variety;

9 “(ii) is clearly distinguishable from
10 the initial variety; and

11 “(iii) except for differences that result
12 from the act of derivation, conforms to the
13 initial variety in the expression of the es-
14 sential characteristics that result from the
15 genotype or combination of genotypes of
16 the initial variety.

17 “(B) METHODS.—An essentially derived
18 variety may be obtained by the selection of a
19 natural or induced mutant or of a somaclonal
20 variant, the selection of a variant individual
21 from plants of the initial variety, backcrossing,
22 transformation by genetic engineering, or other
23 method.

24 “(4) KIND.—The term ‘kind’ means one or
25 more related species or subspecies singly or collec-

1 tively known by one common name, such as soybean,
2 flax, or radish.

3 “(5) SEXUALLY REPRODUCED.—The term ‘sex-
4 ually reproduced’ includes any production of a vari-
5 ety by seed.

6 “(6) UNITED STATES.—The terms ‘United
7 States’ and ‘this country’ mean the United States,
8 territories and possessions of the United States, and
9 the Commonwealth of Puerto Rico.

10 “(7) VARIETY.—The term ‘variety’ means a
11 plant grouping within a single botanical taxon of the
12 lowest known rank, that, without regard to whether
13 the conditions for plant variety protection are fully
14 met, can be defined by the expression of the charac-
15 teristics resulting from a given genotype or combina-
16 tion of genotypes, distinguished from any other
17 plant grouping by the expression of at least one
18 characteristic and considered as a unit with regard
19 to the suitability of the plant grouping for being
20 propagated unchanged. A variety may be rep-
21 resented by seed, transplants, plants, and other
22 matter.

23 “(b) RULES OF CONSTRUCTION.—For the purposes
24 of this Act:

1 “(1) SALE OR DISPOSITION FOR
2 NONREPRODUCTIVE PURPOSES.—The sale or disposi-
3 tion, for other than reproductive purposes, of har-
4 vested material produced as a result of experimen-
5 tation or testing of a variety to ascertain the charac-
6 teristics of the variety, or as a by-product of increas-
7 ing a variety, shall not be considered to be a sale or
8 disposition for purposes of exploitation of the
9 variety.

10 “(2) SALE OR DISPOSITION FOR REPRODUCTIVE
11 PURPOSES.—The sale or disposition of a variety for
12 reproductive purposes shall not be considered to be
13 a sale or disposition for the purposes of exploitation
14 of the variety if the sale or disposition is done as an
15 integral part of a program of experimentation or
16 testing to ascertain the characteristics of the variety,
17 or to increase the variety on behalf of the breeder
18 or the successor in interest of the breeder.

19 “(3) SALE OR DISPOSITION OF HYBRID SEED.—
20 The sale or disposition of hybrid seed shall be con-
21 sidered to be a sale or disposition of harvested mate-
22 rial of the varieties from which the seed was pro-
23 duced.

24 “(4) APPLICATION FOR PROTECTION OR EN-
25 TERING INTO A REGISTER OF VARIETIES.—The fil-

1 ing of an application for the protection or for the en-
2 tering of a variety in an official register of varieties,
3 in any country, shall be considered to render the va-
4 riety a matter of common knowledge from the date
5 of the application, if the application leads to the
6 granting of protection or to the entering of the vari-
7 ety in the official register of varieties, as the case
8 may be.

9 “(5) DISTINCTNESS.—The distinctness of one
10 variety from another may be based on one or more
11 identifiable morphological, physiological, or other
12 characteristics (including any characteristics evi-
13 denced by processing or product characteristics, such
14 as milling and baking characteristics in the case of
15 wheat) with respect to which a difference in geneal-
16 ogy may contribute evidence.

17 “(6) PUBLICLY KNOWN VARIETIES.—

18 “(A) IN GENERAL.—A variety that is ade-
19 quately described by a publication reasonably
20 considered to be a part of the public technical
21 knowledge in the United States shall be consid-
22 ered to be publicly known and a matter of com-
23 mon knowledge.

24 “(B) DESCRIPTION.—A description that
25 meets the requirements of subparagraph (A)

1 shall include a disclosure of the principal char-
2 acteristics by which a variety is distinguished.

3 “(C) OTHER MEANS.—A variety may be-
4 come publicly known and a matter of common
5 knowledge by other means.”.

6 **SEC. 3. RIGHT TO PLANT VARIETY PROTECTION; PLANT**
7 **VARIETIES PROTECTABLE.**

8 Section 42 (7 U.S.C. 2402) is amended to read as
9 follows:

10 **“SEC. 42. RIGHT TO PLANT VARIETY PROTECTION; PLANT**
11 **VARIETIES PROTECTABLE.**

12 “(a) IN GENERAL.—The breeder of any sexually re-
13 produced plant variety (other than fungi or bacteria) who
14 has so reproduced the variety, or the successor in interest
15 of the breeder, shall be entitled to plant variety protection
16 for the variety, subject to the conditions and requirements
17 of this Act, if the variety is—

18 “(1) new, in the sense that, on the date of filing
19 of the application for plant variety protection, propa-
20 gating or harvested material of the variety has not
21 been sold or otherwise disposed of to other persons,
22 by or with the consent of the breeder, or the succes-
23 sor in interest of the breeder, for purposes of exploi-
24 tation of the variety—

1 “(A) in the United States, more than 1
2 year prior to the date of filing; or

3 “(B) in any area outside of the United
4 States—

5 “(i) more than 4 years prior to the
6 date of filing; or

7 “(ii) in the case of a tree or vine,
8 more than 6 years prior to the date of
9 filing;

10 “(2) distinct, in the sense that the variety is
11 clearly distinguishable from any other variety the ex-
12 istence of which is publicly known or a matter of
13 common knowledge at the time of the filing of the
14 application;

15 “(3) uniform, in the sense that any variations
16 are describable, predictable, and commercially ac-
17 ceptable; and

18 “(4) stable, in the sense that the variety, when
19 sexually reproduced, will remain unchanged with re-
20 gard to the essential and distinctive characteristics
21 of the variety with a reasonable degree of reliability
22 commensurate with that of varieties of the same
23 category in which the same breeding method is
24 employed.

25 “(b) MULTIPLE APPLICANTS.—

1 “(1) IN GENERAL.—If 2 or more applicants
2 submit applications on the same effective filing date
3 for varieties that cannot be clearly distinguished
4 from one another, but that fulfill all other require-
5 ments of subsection (a), the applicant who first com-
6 plies with all requirements of this Act shall be enti-
7 tled to a certificate of plant variety protection, to the
8 exclusion of any other applicant.

9 “(2) REQUIREMENTS COMPLETED ON SAME
10 DATE.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), if 2 or more applicants com-
13 ply with all requirements for protection on the
14 same date, a certificate shall be issued for each
15 variety.

16 “(B) VARIETIES INDISTINGUISHABLE.—If
17 the varieties that are the subject of the applica-
18 tions cannot be distinguished in any manner, a
19 single certificate shall be issued jointly to the
20 applicants.”.

21 **SEC. 4. APPLICATIONS.**

22 Section 52 (7 U.S.C. 2422) is amended—

23 (1) in paragraph (1), by adding at the end the
24 following new sentence: “The variety shall be named

1 in accordance with regulations issued by the
2 Secretary.”;

3 (2) in the first sentence of paragraph (2), by
4 striking “novelty” and inserting “distinctiveness,
5 uniformity, and stability”;

6 (3) by redesignating paragraphs (3) and (4) as
7 paragraphs (4) and (5), respectively; and

8 (4) by inserting after paragraph (2) the follow-
9 ing new paragraph:

10 “(3) A statement of the basis of the claim of
11 the applicant that the variety is new.”.

12 **SEC. 5. BENEFIT OF EARLIER FILING DATE.**

13 Section 55(a) (7 U.S.C. 2425(a)) is amended—

14 (1) by redesignating the first and second sen-
15 tences as paragraphs (1) and (2), respectively;

16 (2) in paragraph (1) (as so designated), by in-
17 serting before the period at the end the following: “,
18 not including the date on which the application is
19 filed in the foreign country”; and

20 (3) by adding at the end the following new
21 paragraph:

22 “(3)(A) An applicant entitled to a right of priority
23 under this subsection shall be allowed to furnish any nec-
24 essary information, document, or material required for the
25 purpose of the examination of the application during—

1 “(i) the 2-year period beginning on the date of
2 the expiration of the period of priority ; or

3 “(ii) if the first application is rejected or with-
4 drawn, an appropriate period after the rejection or
5 withdrawal, to be determined by the Secretary.

6 “(B) An event occurring within the period of priority
7 (such as the filing of another application or use of the
8 variety that is the subject of the first application) shall
9 not constitute a ground for rejecting the application or
10 give rise to any third party right.”.

11 **SEC. 6. CONTENTS AND TERM OF PLANT VARIETY PROTEC-**
12 **TION.**

13 Section 83 (7 U.S.C. 2483) is amended—

14 (1) in the second sentence of subsection (a), by
15 striking “by variety name”;

16 (2) in the first sentence of subsection (b)—

17 (A) by striking “eighteen” and inserting
18 “20”; and

19 (B) by inserting before the period at the
20 end the following: “, except that, in the case of
21 a tree or vine, the term of the plant variety pro-
22 tection shall expire 25 years from the date of
23 issue of the certificate”; and

24 (3) in subsection (c), by striking “repository:
25 *Provided, however, That*” and inserting “repository,

1 or requiring the submission of a different name for
2 the variety, except that”.

3 **SEC. 7. PRIORITY CONTEST.**

4 (a) PRIORITY CONTEST; EFFECT OF ADVERSE FINAL
5 JUDGMENT OR INACTION.—Sections 92 and 93 (7 U.S.C.
6 2502 and 2503) are repealed.

7 (b) INTERFERING PLANT; VARIETY PROTECTION.—

8 (1) REDESIGNATION.—Chapter 9 of title II (7
9 U.S.C. 2501 et seq.) is amended by redesignating
10 section 94 (7 U.S.C. 2504) as section 92.

11 (2) AMENDMENTS.—Section 92 (as so redesign-
12 nated) is amended—

13 (A) by striking “The owner” and inserting

14 “(a) The owner”; and

15 (B) by striking the second sentence.

16 (c) APPEAL OR CIVIL ACTION IN CONTESTED
17 CASES.—

18 (1) TRANSFER.—Section 73 (7 U.S.C. 2463) is
19 amended by transferring subsection (b) to the end
20 of section 92 (as redesignated by subsection (b)(1)).

21 (2) REPEAL.—Section 73 (as amended by para-
22 graph (1)) is repealed.

23 (d) CONFORMING AMENDMENT.—Section 71 (7
24 U.S.C. 2461) is amended by striking “92,”.

1 **SEC. 8. INFRINGEMENT OF PLANT VARIETY PROTECTION.**

2 Section 111 (7 U.S.C. 2541) is amended—

3 (1) in subsection (a)—

4 (A) by striking “novel” the first two places
5 it appears and inserting “protected”;

6 (B) in paragraph (1), by striking “the
7 novel” and inserting “or market the protected”;

8 (C) by striking “novel” each place it ap-
9 pears in paragraphs (2) through (7);

10 (D) by striking “or” each place it appears
11 at the end of paragraphs (3) through (6);

12 (E) by redesignating paragraphs (7) and
13 (8) as paragraphs (9) and (10), respectively;
14 and

15 (F) by inserting after paragraph (6) the
16 following new paragraphs:

17 “(7) condition the variety for the purpose of
18 propagation;

19 “(8) stock the variety for any of the purposes
20 referred to in paragraphs (1) through (7);”;

21 (2) by redesignating subsection (b) as sub-
22 section (f); and

23 (3) by inserting after subsection (a) the follow-
24 ing new subsections:

1 “(b) The owner of a protected variety may authorize
2 the use of the variety under this section subject to condi-
3 tions and limitations specified by the owner.

4 “(c) This section shall apply equally to—

5 “(1) any variety that is essentially derived from
6 a protected variety, unless the protected variety is
7 an essentially derived variety;

8 “(2) any variety that is not clearly distinguish-
9 able from a protected variety;

10 “(3) any variety whose production requires the
11 repeated use of a protected variety; and

12 “(4) harvested material (including entire plants
13 and parts of plants) obtained through the unauthor-
14 ized use of propagating material of a protected vari-
15 ety, unless the owner of the variety has had a rea-
16 sonable opportunity to exercise the rights provided
17 by this Act with respect to the propagating material.

18 “(d) It shall not be an infringement of the rights of
19 the owner of a variety to perform any act concerning prop-
20 agating material of any kind, or harvested material, in-
21 cluding entire plants and parts of plants, of a protected
22 variety that has been sold or otherwise marketed with the
23 consent of the owner in the United States, unless the act
24 involves further propagation of the variety or involves an
25 export of material of the variety, that enables the propaga-

1 tion of the variety, into a country that does not protect
2 varieties of the plant genus or species to which the variety
3 belongs, unless the exported material is for final consump-
4 tion purposes.

5 “(e) It shall not be an infringement of the rights of
6 the owner of a variety to perform any act done privately
7 and for noncommercial purposes.”.

8 **SEC. 9. RIGHT TO SAVE SEED; CROP EXEMPTION.**

9 The first sentence of section 113 (7 U.S.C. 2543) is
10 amended by striking “section: *Provided*, That” and all
11 that follows through the period and inserting “section.”.

12 **SEC. 10. LIMITATION OF DAMAGES; MARKING AND NOTICE.**

13 Section 127 (7 U.S.C. 2567) is amended by striking
14 “novel” each place it appears.

15 **SEC. 11. OBLIGATION TO USE VARIETY NAME.**

16 Section 128(a) (7 U.S.C. 2568(a)) is amended by
17 adding at the end the following new paragraph:

18 “(4) Failure to use the name of a variety for
19 which a certificate of protection has been issued
20 under this Act, even after the expiration of the
21 certificate.”.

22 **SEC. 12. TRANSITIONAL PROVISIONS.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), any variety for which a certificate of plant variety pro-
25 tection has been issued prior to the effective date of this

1 Act, and any variety for which an application is pending
2 on the effective date of this Act, shall continue to be gov-
3 erned by the Plant Variety Protection Act (7 U.S.C. 2321
4 et seq.), as in effect on the day before the effective date
5 of this Act.

6 (b) APPLICATIONS WITHDRAWN AND REFILED.—If
7 a pending application is withdrawn and refiled after the
8 effective date of this Act, eligibility for protection and the
9 terms of protection shall be governed by the Plant Variety
10 Protection Act, as amended by this Act.

11 **SEC. 13. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall
13 become effective 180 days after the date of enactment of
14 this Act.

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