

## Plant Variety Protection Act

[Public Law 91–577]

[As Amended Through P.L. 115–334, Enacted December 20, 2018]

[Currency: This publication is a compilation of the text of title I of Public Law 91–577. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>]

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

AN ACT To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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## TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

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### CHAPTER 4. PROTECTABILITY OF PLANT VARIETIES

#### SEC. 41. [7 U.S.C. 2401] DEFINITIONS AND RULES OF CONSTRUCTION

(a) DEFINITIONS.—As used in this Act:

(1) ASEXUALLY REPRODUCED.—The term “asexually reproduced” means produced by a method of plant propagation using vegetative material (other than seed) from a single parent, including cuttings, grafting, tissue culture, and propagation by root division.

(2) BASIC SEED.—The term “basic seed” means the seed planted to produce certified or commercial seed.

(3) BREEDER.—The term “breeder” means the person who directs the final breeding creating a variety or who discovers and develops a variety. If the actions are conducted by an agent on behalf of a principal, the principal, rather than the agent, shall be considered the breeder. The term does not include a person who redevelops or rediscovers a variety the ex-

istence of which is publicly known or a matter of common knowledge.

(4) **ESSENTIALLY DERIVED VARIETY.**—

(A) **IN GENERAL.**—The term “essentially derived variety” means a variety that—

(i) is predominantly derived from another variety (referred to in this paragraph as the “initial variety”) or from a variety that is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

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

(iii) except for differences that result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(B) **METHODS.**—An essentially derived variety may be obtained by the selection of a natural or induced mutant or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, transformation by genetic engineering, or other method.

(5) **KIND.**—The term “kind” means one or more related species or subspecies singly or collectively known by one common name, such as soybean, flax, or radish.

(6) **SEED.**—The term “seed”, with respect to a tuber propagated variety, means the tuber or the part of the tuber used for propagation.

(7) **SEXUALLY REPRODUCED.**—The term “sexually reproduced” includes any production of a variety by seed, but does not include the production of a variety by tuber propagation.

(8) **TUBER PROPAGATED.**—The term “tuber propagated” means propagated by a tuber or a part of a tuber.

(9) **UNITED STATES.**—The terms “United States” and “this country” mean the United States, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(10) **VARIETY.**—The term “variety” means a plant grouping within a single botanical taxon of the lowest known rank, that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other matter.

(b) **RULES OF CONSTRUCTION.**—For the purposes of this Act:

(1) **SALE OR DISPOSITION FOR NONREPRODUCTIVE PURPOSES.**—The sale or disposition, for other than reproductive purposes, of harvested material produced as a result of experimentation or testing of a variety to ascertain the characteris-

tics of the variety, or as a by-product of increasing a variety, shall not be considered to be a sale or disposition for purposes of exploitation of the variety.

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

(3) SALE OR DISPOSITION OF HYBRID SEED.—The sale or disposition of hybrid seed shall be considered to be a sale or disposition of harvested material of the varieties from which the seed was produced.

(4) APPLICATION FOR PROTECTION OR ENTERING INTO A REGISTER OF VARIETIES.—The filing of an application for the protection or for the entering of a variety in an official register of varieties, in any country, shall be considered to render the variety a matter of common knowledge from the date of the application, if the application leads to the granting of protection or to the entering of the variety in the official register of varieties, as the case may be.

(5) DISTINCTNESS.—The distinctness of one variety from another may be based on one or more identifiable morphological, physiological, or other characteristics (including any characteristics evidenced by processing or product characteristics, such as milling and baking characteristics in the case of wheat) with respect to which a difference in genealogy may contribute evidence.

(6) PUBLICLY KNOWN VARIETIES.—

(A) IN GENERAL.—A variety that is adequately described by a publication reasonably considered to be a part of the public technical knowledge in the United States shall be considered to be publicly known and a matter of common knowledge.

(B) DESCRIPTION.—A description that meets the requirements of subparagraph (A) shall include a disclosure of the principal characteristics by which a variety is distinguished.

(C) OTHER MEANS.—A variety may become publicly known and a matter of common knowledge by other means.

**SEC. 42. [7 U.S.C. 2402] RIGHT TO PLANT VARIETY PROTECTION; PLANT VARIETIES PROTECTABLE**

(a) IN GENERAL.—The breeder of any sexually reproduced, tuber propagated, or asexually reproduced plant variety (other than fungi or bacteria) who has so reproduced the variety, or the successor in interest of the breeder, shall be entitled to plant variety protection for the variety, subject to the conditions and requirements of this Act, if the variety is—

(1) new, in the sense that, on the date of filing of the application for plant variety protection, propagating or harvested material of the variety has not been sold or otherwise disposed

of to other persons, by or with the consent of the breeder, or the successor in interest of the breeder, for purposes of exploitation of the variety—

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

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

(i) more than 4 years prior to the date of filing, except that in the case of a tuber propagated plant variety the Secretary may waive the 4-year limitation for a period ending 1 year after the date of enactment of the Federal Agriculture Improvement and Reform Act of 1996; or

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

(2) distinct, in the sense that the variety is clearly distinguishable from any other variety the existence of which is publicly known or a matter of common knowledge at the time of the filing of the application;

(3) uniform, in the sense that any variations are describable, predictable, and commercially acceptable; and

(4) stable, in the sense that the variety, when reproduced, will remain unchanged with regard to the essential and distinctive characteristics of the variety with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) MULTIPLE APPLICANTS.—

(1) IN GENERAL.—If 2 or more applicants submit applications on the same effective filing date for varieties that cannot be clearly distinguished from one another, but that fulfill all other requirements of subsection (a), the applicant who first complies with all requirements of this Act shall be entitled to a certificate of plant variety protection, to the exclusion of any other applicant.

(2) REQUIREMENTS COMPLETED ON SAME DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if 2 or more applicants comply with all requirements for protection on the same date, a certificate shall be issued for each variety.

(B) VARIETIES INDISTINGUISHABLE.—If the varieties that are the subject of the applications cannot be distinguished in any manner, a single certificate shall be issued jointly to the applicants.

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### **TITLE III—PLANT VARIETY PROTECTION AND RIGHTS**

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## CHAPTER 11. INFRINGEMENT OF PLANT VARIETY PROTECTION

### SEC. 111. [7 U.S.C. 2541] INFRINGEMENT OF PLANT VARIETY PROTECTION.

(a) Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a protected variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a protected plant variety with the notice under section 127:

- (1) sell or market the protected variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;
- (2) import the variety into, or export it from, the United States;
- (3) sexually or asexually multiply, or propagate by a tuber or a part of a tuber, the variety as a step in marketing (for growing purposes) the variety;
- (4) use the variety in producing (as distinguished from developing) a hybrid or different variety therefrom;
- (5) use seed which had been marked "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or progeny thereof to propagate the variety;
- (6) dispense the variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received;
- (7) condition the variety for the purpose of propagation, except to the extent that the conditioning is related to the activities permitted under section 113;
- (8) stock the variety for any of the purposes referred to in paragraphs (1) through (7);
- (9) perform any of the foregoing acts even in instances in which the variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or
- (10) instigate or actively induce performance of any of the foregoing acts.

(b)(1) Subject to paragraph (2), the owner of a protected variety may authorize the use of the variety under this section subject to conditions and limitations specified by the owner.

(2) In the case of a contract between a seed producer and the owner of a protected variety of lawn, turf, or forage grass seed, or alfalfa or clover seed for the production of seed of the protected variety, the producer shall be deemed to be authorized by the owner to sell such seed and to use the variety if—

- (A) the producer has fulfilled the terms of the contract;
- (B) the owner refuses to take delivery of the seed or refuses to pay any amounts due under the contract within 30 days of the payment date specified in the contract; and
- (C) after the expiration of the period specified in subparagraph (B), the producer notifies the owner of the producer's in-

tent to sell the seed and unless the owner fails to pay the amounts due under the contract and take delivery of the seed within 30 days of such notification. For the purposes of this paragraph, the term “owner” shall include any licensee of the owner.

(3) Paragraph (2) shall apply to contracts entered into with respect to plant varieties protected under this Act (7 U.S.C. 2321 et seq.) as in effect on the day before the effective date of this provision as well as plant varieties protected under this Act as amended by the Plant Variety Protection Act Amendments of 1994.

(4) Nothing in this subsection shall affect any other rights or remedies of producers or owners that may exist under other Federal or State laws.

(c) This section shall apply equally to—

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

(2) any variety that is not clearly distinguishable from a protected variety;

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

(4) harvested material (including entire plants and parts of plants) obtained through the unauthorized use of propagating material of a protected variety, unless the owner of the variety has had a reasonable opportunity to exercise the rights provided under this Act with respect to the propagating material.

(d) It shall not be an infringement of the rights of the owner of a variety to perform any act concerning propagating material of any kind, or harvested material, including entire plants and parts of plants, of a protected variety that is sold or otherwise marketed with the consent of the owner in the United States, unless the act involves further propagation of the variety or involves an export of material of the variety, that enables the propagation of the variety, into a country that does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption purposes.

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

(f) As used in this section, the term “perform without authority” includes performance without authority by any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.

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**CHAPTER 12. REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS****SEC. 121. [7 U.S.C. 2561] REMEDY FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.**

An owner shall have remedy by civil action for infringement of plant variety protection under section 111. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

**SEC. 122. [7 U.S.C. 2562] PRESUMPTION OF VALIDITY; DEFENSES.**

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the variety protection in suit on any ground specified in section 42 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 52; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this Act.

**SEC. 123. [7 U.S.C. 2563] INJUNCTION.**

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

**SEC. 124. [7 U.S.C. 2564] DAMAGES.**

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

**SEC. 125. [7 U.S.C. 2565] ATTORNEY FEES.**

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

**SEC. 126. [7 U.S.C. 2566] TIME LIMITATION ON DAMAGES.**

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that the claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

**SEC. 127. [7 U.S.C. 2567] LIMITATION OF DAMAGES; MARKING AND NOTICE.**

Owners may give notice to the public by physically associating with or affixing to the container of seed of a variety or by fixing to the variety, a label containing either the words "Unauthorized Propagation Prohibited" or the words "Unauthorized Seed Multiplication Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

**SEC. 128. [7 U.S.C. 2568] FALSE MARKING; CEASE AND DESIST ORDERS.**

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually or asexually reproducible plant material or tubers or parts of tubers, is prohibited, and the Secretary may, if the Secretary determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of the phrase "propagation prohibited" or similar phrase without reasonable basis, a statement of this basis being promptly filed with the Secretary if the phrase is used beyond testing and no application has been filed. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(4) Failure to use the name of a variety for which a certificate of protection has been issued under this Act, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed may be sold without a variety name unless use of the name of a variety for which a certificate of protection has been issued under this Act is required under State law.



(b) An one convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than \$10,000 and not less than \$500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

**SEC. 129. [7 U.S.C. 2569] NONRESIDENT PROPRIETORS; SERVICE AND NOTICE.**

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court.

**SEC. 130. [7 U.S.C. 2570] LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.**

(a) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of plant variety protection under section 111, or for any other violation under this title.

(b) In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 124, and attorney fees under section 125.

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