

Public Law 91-577

December 24, 1970
[S.3070]

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.

Plant Variety
Protection Act.

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

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TITLE I—PLANT VARIETY PROTECTION OFFICE

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Chapter 1.—ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.

There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.

Sec. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Sec. 3. Organization.

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this Act.

Sec. 4. Restrictions on Employees as to Interest in Plant Variety Protection.

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly, except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office.

Sec. 5. Bond of Employees.

Such employees as the Secretary designates, before entering upon their duties, shall severally give bond, with sureties, in sums prescribed by the Secretary, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

Sec. 6. Regulations.

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Protection Board.

Sec. 7. Plant Variety Protection Board.

(a) **APPOINTMENT.**—The Secretary shall appoint a Plant Variety Protection Board. The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or his designee shall act as chairman of the Board without voting rights except in the case of ties.

(b) **FUNCTIONS OF BOARD.**—The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this Act;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 44.

(c) **COMPENSATION OF BOARD.**—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.

Sec. 8. Library.

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.

Sec. 9. Register of Protected Plant Varieties.

The Secretary shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.

Sec. 10. Publications.

(a) The Secretary may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The specifications for plant variety protection including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies

of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

Sec. 23. Testimony in Plant Variety Protection Office Cases.

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, he shall have like power.

Sec. 24. Subpoenas, Witnesses.

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

Sec. 25. Effect of Defective Execution.

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

Sec. 26. Regulations for Practice Before the Office.

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Protection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

Sec. 27. Unauthorized Practice.

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

Chapter 3.—PLANT VARIETY PROTECTION FEES

Sec. 31. Plant Variety Protection Fees; Appropriations.

The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized shall be recovered to the Treasury of the United States of America, and expenses needed for the administration of this Act shall come through the Nation's regular budgetary, authorization, and appropriations process. The initial capital of the fund shall consist of appropriations, which are hereby authorized to be made. Until such time as the Secretary prescribes fees as provided by this section, a fee of \$50 shall be charged for filing each application, subject to such adjustment as may be appropriate after fees are prescribed by the Secretary hereunder.

Sec. 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

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Chapter 4.—PROTECTABILITY OF PLANT VARIETIES

Sec. 41. Definitions and Rules of Construction.

The definitions and rules of construction set forth in this section apply for the purposes of this Act.

(a) The term “novel variety” may be represented by, without limitation, seed, transplants, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics (which may include those evidenced by processing or product characteristics, for example, milling and baking characteristics in the case of wheat) as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

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

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

(b) The terms “United States” and “this country” means the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term “kind” means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, or radish.

(d) The term “date of determination” means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term “breeder” shall mean the person who—

(1) directs the final breeding creating the novel variety, or

(2) discovers the novel variety, and

makes the tentative determination described in subsection (d). Where such actions are conducted by an agent on behalf of his principal, the principal, rather than the agent, shall be considered the breeder. The terms “breed”, “develop”, “originate”, and “discover”, and derivatives thereof shall each include the other.

(f) The term “sexually reproduced” shall include any production of a variety by seed.

(g) The term “basic seed” means the seed planted to produce certified or commercial seed.

(h) The term “testing” means testing or experimental use of a variety before any sale thereof. Sale for other than seed purposes of seed or other plant material produced as the result of testing shall not constitute a sale for the purpose of the preceding sentence or for the purpose of the following subsection.

(i) The term “public variety” means a variety sold or used in this country, or existing in and publicly known in this country; but use for the purpose of testing, or sale or use as individual plants not known to be sexually reproducible, shall not make the variety a public variety.

(j) A variety described in a publication as specified in section 42(a) (1)(B) is “effectively available to workers in this country” if a source from which it can be purchased is indicated in such publication or readily determinable or if such publication teaches how to produce

the variety from source-material effectively available to workers in this country.

Sec. 42. Right to Plant Variety Protection; Plant Varieties Protectable.

(a) The breeder of any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids) who has so reproduced the variety, or his successor in interest, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) An application for protection of the variety based on the same breeder's acts, was filed in a foreign country by the owner or his privies more than one year before the effective filing date of the application filed in the United States.

(3) Another is entitled to an earlier date of determination for the same variety and such other (A) has a certificate of plant variety protection hereunder or (B) has been engaged in a continuing program of development and testing to commercialization, or (C) has within six months after such earlier date of determination adequately described the variety by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(b) The Secretary may, by regulation, extend for a reasonable period of time the one year time period provided in subsection (a) for filing applications, and may in that event provide for at least commensurate reduction of the term of protection.

Sec. 43. Reciprocity Limits.

Protection under the Act may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

Sec. 44. Public Interest In Wide Usage.

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 71 or 72 (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

Chapter 5.—APPLICATIONS; FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Sec. 51. Application for Recognition of Plant Variety Rights.

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary.

Sec. 52. Content of Application.

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued.

(2) A description of the variety setting forth its novelty and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A declaration that a viable sample of basic seed necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder. This declaration may be added by amendment.

(4) A statement of the basis of applicant's ownership.

Sec. 53. Joint Breeders.

(a) When two or more persons are the breeders, one (or his successor) may apply, naming the others.

(b) The Secretary, after such notice as he may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application.

Sec. 54. Death or Incapacity of Breeder.

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon compliance with the requirements and on the same terms and conditions applicable to the breeder or his successor in interest.

Sec. 55. Benefit of Earlier Filing Date.

(a) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States

by nationals of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed. No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in his application or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the United States by or on behalf of the same person, or by his predecessor in title, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

Sec. 56. Confidential Status of Application.

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies.

Sec. 57. Publication.

The Secretary may establish regulations for the publication of any pending application when publication is requested by the owner.

Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Sec. 61. Examination of Application.

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as hereinafter provided.

Sec. 62. Notice of Refusal; Reconsideration.

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to him of an action other than allowance, an applicant shall be allowed six months, or such other time as the Secretary in exceptional circumstances shall set in the refusal, or such time as he may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

Sec. 63. Initial Appeal.

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW**Sec. 71. Appeals.**

28 USC app.

From the decisions made under sections 44, 63, 91, 92, and 128 appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in 28 U.S.C. 2343.

80 Stat. 622.

Sec. 72. Civil Action Against Secretary.

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this Act.

Sec. 73. Appeal or Civil Action in Contested Cases.

(a) A party to a proceeding under section 92 of this title, dissatisfied with the decision, may take an appeal under section 71 or may have remedy by civil action if commenced within sixty days after such decision or within such further time as the Secretary allows. A party contemplating appeal as provided herein shall notify all adverse parties of his intention and any such adverse party, not the Secretary, shall have the right, by notice served within ten days of the notice to him, to elect that any review shall be by civil action. In such suits the record in the Plant Variety Protection Office shall be admitted on motion of any party upon the terms and conditions as to costs, expenses, and the further cross-examination of witnesses, as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Plant Variety Protection Office when admitted shall have the same effect as if originally taken and produced in the suit.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but he shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety protection on the filing in the Plant Variety Protection Office of a

certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52(3), the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Secretary or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

Sec. 83. Contents and Term of Plant Variety Protection.

(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this Act. If the owner so elects, the certificate shall also specify that in the United States, seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner. Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver. The Secretary may at his discretion permit such election or waiver to be made after certifying and amend the certificate accordingly, without retroactive effect.

(b) The term of plant variety protection shall expire seventeen years from the date of issue of the certificate in the United States. If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certifying, relating to replenishing seed in a public repository: *Provided*,

Expiration date.

however. That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101(d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a corrected certificate of plant variety protection without charge in lieu of and with like effect as a certificate of correction.

Sec. 85. Certificate of Correction of Applicant's Mistake.

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of the required fee, issue a certificate of correction in the manner and with attachment of copies as in section 84, if the correction unquestionably could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

Sec. 86. Correction of Named Breeder.

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by him or upon order of a federal court before which the matter is called in question. Upon such correction the Secretary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights he otherwise would have had.

Chapter 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Sec. 91. Reexamination After Issue.

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations. Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation of the plant variety certificate thereon and notice

thereof shall be endorsed on copies of the specification of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as he shall establish.

Sec. 92. Priority Contest.

(a) If the Secretary determines that two applications of different applicants may be based on the same variety, he may:

(1) Initiate a priority contest on his own motion whether or not one of the applications may have been certificated; or

(2) Issue a certificate on the application having the earliest effective filing date, with notice to all; or

(3) Issue a certificate naming alternative owners, under a single variety name acceptable to both.

(b) On request of any person when a certificate has been issued naming another as an owner or alternative owner, both having applied for protection on the same variety, the Secretary shall institute a priority contest, except that any person shall have forfeited his right to assert priority for the purpose of obtaining plant variety protection when an adverse certificate has issued if he fails to make the request within one year of the mailing of notice specified in part (2) above or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

Sec. 93. Effect of Adverse Final Judgment or of Non Action.

(a) A final judgment under section 92 adverse to an application from which no appeal or other review had been or can be taken or had shall constitute cancellation of any certifying on that application, and notice thereof shall be endorsed on copies of the specifications of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(b) Any person who has not proceeded in accordance with the provision of this chapter shall not be foreclosed or in any way prejudiced with respect to the defense of an infringement suit or affirmative relief under declaratory judgment proceedings.

(c) No person subject to an adverse decision in a proceeding under this chapter shall be foreclosed with respect to asserting comparable grounds in defense of an infringement suit or as a basis for affirmative relief under declaratory judgment proceedings.

Sec. 94. Interfering Plant Variety Protection.

The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of the certificate. The provisions of section 73(b) of this title shall apply to actions brought under this section.

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

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Chapter 10.—OWNERSHIP AND ASSIGNMENT

Sec. 101. Ownership and Assignment.

(a) Subject to the provisions of this title, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgment thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage.

Sec. 102. Ownership During Testing.

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible plant material available to the public, as by sale thereof.

Chapter 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Sec. 111. Infringement of Plant Variety Protection.

Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a novel 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 novel plant variety with the notice under section 127:

(1) sell the novel 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 novel variety into, or export it from, the United States;

- (3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or
- (4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or
- (5) use seed which had been marked "propagation prohibited" or progeny thereof to propagate the novel variety; or
- (6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or
- (7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or
- (8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Grandfather Clause.

Nothing in this Act shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 113. Right To Save Seed; Crop Exemption.

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided*, That without regard to the provisions of section 111(3) it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 127 that his actions constitute an infringement.

Sec. 114. Research Exemption.

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this Act.

Sec. 115. Intermediary Exemption.

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this Act.

Chapter 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Sec. 121. Remedy for Infringement of Plant Variety Protection.

An owner shall have remedy by civil action for infringement of his 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. 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 plant 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. 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. 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. Attorney Fees.

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

Sec. 126. 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 his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

Sec. 127. 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 novel variety or by fixing to the novel variety, a label containing the words "Propagation Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the novel 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. 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 reproducible plant material, is prohibited, and the Secretary may, if he 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.

(b) Anyone 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. 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.

Chapter 13.—INTENT AND SEVERABILITY

Sec. 131. Intent.

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

USC prec. title 1.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances.

Chapter 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; EXEMPTED PLANTS; MISCELLANEOUS

Sec. 141. Effective Date.

This Act shall take effect upon enactment. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

Sec. 142. Amendment of Federal Seed Act.

The Federal Seed Act (53 Stat. 1275) is amended as follows:

(a) By adding at the end thereof:

7 USC 1551.

“TITLE V—SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

“Section 501.

“(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.”

(b) By adding at the end of section 102 the following wording: “Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when

“(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

“(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation.”

Sec. 143. Amendment of Judicial Code.

Title 28 of the United States Code, entitled Judicial Code and Judiciary, is amended as follows:

(a) After section 1544 add:

“Sec. 1545. Decision of the Plant Variety Protection Office.

“The Court of Customs and Patent Appeals shall have nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act.”

Protected variety, seed certification, limitation.
83 Stat. 134.
7 USC 1562.

62 Stat. 869.

80 Stat. 901.

(b) In section 1338 after "Patents" in the heading, after "patents" and after "patent" (both occurrences) insert "plant variety protection".

62 Stat. 931.

(c) After section 2351 add:

80 Stat. 624.

"2353. The Court of appeals has nonexclusive jurisdiction to hear appeals under section 71 of the Plant Variety Protection Act."

(d) In section 1498 add the following new subsection:

"(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: *Provided, however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations."

Actions against
U.S.; Court of
Claims.
62 Stat. 941;
74 Stat. 855.

Sec. 144. Exempted Plants.

The provisions of this Act shall not apply to the seeds, plants, or transplants of okra, celery, peppers, tomatoes, carrots, and cucumbers.

Sec. 145. Short Title.

This Act may be cited as the "Plant Variety Protection Act".

Approved December 24, 1970.

Public Law 91-578

AN ACT

To amend section 2 of the Act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands.

December 24, 1970
[S. 3479]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of June 30, 1954 (68 Stat. 330), as amended, is amended by deleting "for fiscal year 1969, \$5,000,000 in addition to the sums heretofore appropriated, for fiscal year 1970, \$50,000,000 and for the fiscal year 1971, \$50,000,000" and inserting in lieu thereof the following: "for each of the fiscal years 1971, 1972, and 1973, \$60,000,000".

Pacific Trust
Territory, civil
government.
Appropriation.
82 Stat. 1213.
48 USC 1681
note.

Approved December 24, 1970.