

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.

(Pub. L. 91-577, title III, §101, Dec. 24, 1970, 84 Stat. 1554.)

### § 2532. Ownership during testing

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible or tuber propagable 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 or tuber propagable plant material available to the public, as by sale thereof.

(Pub. L. 91-577, title III, §102, Dec. 24, 1970, 84 Stat. 1554; Pub. L. 103-349, §8(d)(2), Oct. 6, 1994, 108 Stat. 3141.)

### Editorial Notes

#### AMENDMENTS

1994—Pub. L. 103-349 inserted “or tuber propagable” after “sexually reproducible” in two places.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

#### PART K—INFRINGEMENT OF PLANT VARIETY PROTECTION

### § 2541. Infringement of plant variety protection

#### (a) Acts constituting infringement

Except as otherwise provided in this subchapter, 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 2567 of this title:

(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 2543 of this title;

(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) Uses authorized by owner

(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 intent 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 chapter as in effect on the day before the effective date of this provision as well as plant varieties protected under this chapter 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) Applicability to certain plant varieties

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;