

(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 chapter with respect to the propagating material.

**(d) Acts not considered infringing**

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) Private noncommercial uses**

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) “Perform without authority” defined**

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 chapter in the same manner and to the same extent as any nongovernmental entity.

(Pub. L. 91-577, title III, §111, Dec. 24, 1970, 84 Stat. 1554; Pub. L. 96-574, §19(a), Dec. 22, 1980, 94 Stat. 3351; Pub. L. 102-560, §3(a), Oct. 28, 1992, 106 Stat. 4231; Pub. L. 103-349, §§9, 13(q), Oct. 6, 1994, 108 Stat. 3141, 3144; Pub. L. 115-334, title X, §10108(c), Dec. 20, 2018, 132 Stat. 4906.)

**Editorial Notes**

REFERENCES IN TEXT

The effective date of this provision, referred to in subsec. (b)(3), probably means the effective date of subsec. (b)(3), which was added by Pub. L. 103-349, effective 180 days after Oct. 6, 1994. See Effective Date of 1994 Amendment note set out under section 2401 of this title.

The Plant Variety Protection Act Amendments of 1994, referred to in subsec. (b)(3), is Pub. L. 103-349, Oct. 6, 1994, 108 Stat. 3136. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 2321 of this title and Tables.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115-334 inserted “or asexually” after “sexually”.

1994—Subsec. (a). Pub. L. 103-349, §9(1)(A), substituted “protected” for “novel” in two places in introductory provisions.

Subsec. (a)(1). Pub. L. 103-349, §9(1)(B), substituted “or market the protected” for “the novel”.

Subsec. (a)(2). Pub. L. 103-349, §9(1)(C), struck out “novel” before “variety”.

Subsec. (a)(3). Pub. L. 103-349, §9(1)(C)-(E), inserted “, or propagate by a tuber or a part of a tuber,” after “multiply”, struck out “novel” before “variety”, and struck out “or” at end.

Subsec. (a)(4) to (6). Pub. L. 103-349, §9(1)(C), (E), struck out “novel” before “variety” and struck out “or” at end.

Subsec. (a)(7). Pub. L. 103-349, §9(1)(G), added par. (7). Former par. (7) redesignated (9).

Pub. L. 103-349, §9(1)(C), struck out “novel” before “variety”.

Subsec. (a)(8). Pub. L. 103-349, §9(1)(G), added par. (8). Former par. (8) redesignated (10).

Subsec. (a)(9), (10). Pub. L. 103-349, §9(1)(F), redesignated pars. (7) and (8) as (9) and (10), respectively.

Subsecs. (b) to (e). Pub. L. 103-349, §9(3), added subsecs. (b) to (e). Former subsec. (b) redesignated (f).

Subsec. (f). Pub. L. 103-349, §§9(2), 13(q), redesignated subsec. (b) as (f) and in first sentence substituted “the official capacity of the officer or employee” for “his official capacity”.

1992—Pub. L. 102-560 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Par. (5). Pub. L. 96-574 substituted “‘Unauthorized Propagation Prohibited’ or ‘Unauthorized Seed Multiplication Prohibited’” for “‘propagation prohibited’”.

**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.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-560, §4, Oct. 28, 1992, 106 Stat. 4232, provided that: “The amendments made by this Act [enacting section 2570 of this title and section 296 of Title 35, Patents, and amending this section and section 271 of Title 35] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Oct. 28, 1992].”

**§ 2542. Grandfather clause**

Nothing in this chapter shall abridge the right of any person, or the successor in interest of the person, 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.

(Pub. L. 91-577, title III, §112, Dec. 24, 1970, 84 Stat. 1555; Pub. L. 103-349, §13(r), Oct. 6, 1994, 108 Stat. 3144.)

**Editorial Notes**

AMENDMENTS

1994—Pub. L. 103-349 substituted “the successor in interest of the person” for “his successor in interest”.

**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.

**§ 2543. Right to save seed; crop exemption**

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 2541<sup>1</sup> of this title, it shall not

<sup>1</sup> See References in Text note below.