

(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.

infringe any right hereunder for a person to save seed produced by the person 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 the farm of the person, or for sale as provided in this section. 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 2567 of this title that the actions of the purchaser constitute an infringement.

(Pub. L. 91-577, title III, §113, Dec. 24, 1970, 84 Stat. 1555; Pub. L. 103-349, §§10, 13(s), Oct. 6, 1994, 108 Stat. 3142, 3144.)

#### Editorial Notes

##### REFERENCES IN TEXT

Subsections (3) and (4) of section 2541 of this title, referred to in text, probably means paragraphs (3) and (4) of section 2541 of this title, which were redesignated subsection (a)(3) and (4) of section 2541 of this title by Pub. L. 102-560, §3(a), Oct. 28, 1992, 106 Stat. 4231.

##### AMENDMENTS

1994—Pub. L. 103-349, §§10, 13(s)(1), in first sentence substituted “produced by the person” for “produced by him”, “the farm of the person” for “his farm”, and “section.” for “section: *Provided*, That without regard to the provisions of section 2541(3) of this title 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.”

Pub. L. 103-349, §13(s)(2), substituted “the actions of the purchaser” for “his actions” in third sentence.

#### 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.

#### § 2544. 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 chapter.

(Pub. L. 91-577, title III, §114, Dec. 24, 1970, 84 Stat. 1555.)

#### § 2545. 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 chapter.

(Pub. L. 91-577, title III, §115, Dec. 24, 1970, 84 Stat. 1555.)

#### PART L—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

#### § 2561. Remedy for infringement of plant variety protection

An owner shall have remedy by civil action for infringement of plant variety protection under section 2541 of this title. 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.

(Pub. L. 91-577, title III, §121, Dec. 24, 1970, 84 Stat. 1556; Pub. L. 103-349, §13(t), Oct. 6, 1994, 108 Stat. 3144.)

#### Editorial Notes

##### AMENDMENTS

1994—Pub. L. 103-349 struck out “his” before “plant” in first sentence.

#### 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.

#### § 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 plant variety protection in suit on any ground specified in section 2402 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 2422 of this title; (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 chapter.

(Pub. L. 91-577, title III, §122, Dec. 24, 1970, 84 Stat. 1556.)

#### § 2563. Injunction

The several courts having jurisdiction of cases under this subchapter 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.

(Pub. L. 91-577, title III, §123, Dec. 24, 1970, 84 Stat. 1556.)

#### § 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 ei-