

The Plant Variety Protection Act

Fact Sheet No. 0.301

Crop Series | **Production**

by B. Erker and M.A. Brick*

Revised by H. Schwartz**

The Plant Variety Protection Act (PVPA) was originally signed into law in 1970, and later amended in 1994. This act is a voluntary program that provides patent-like rights to breeders, developers, and owners of plant varieties. The amended act also added protection to potatoes and other tuber crops.

The primary purpose of the PVPA is to ensure that developers of varieties would benefit and be able to recover research cost. Without the PVPA, the only protection available to breeders was the biological protection of inbreds used for hybrid seed production; hence, the act was passed to encourage the development of new non-hybrid varieties.

What Protection Means

Varieties that are protected under the PVPA can be sold or advertised for seeding purposes only by the owner of the protection certificate or with the owner's permission. The owner of the certificate may bring civil action against persons infringing on his or her rights, and may ask a court to issue an injunction to prevent others from violating proprietary rights. The damages awarded by a court must at least compensate the certificate owner for the infringement. Awards could also include attorney fees and up to triple damages where willful infringement is found. The term of the protection expires 18 years after the certificate is issued for varieties filed under the original act, and 20 years for most varieties covered under the amended act.

The passage of the amended PVPA has allowed the United States to be a signatory in the international plant breeder's rights

treaty (UPOV), and therefore proprietary rights on varieties are now respected in many countries worldwide.

Types of Protection

Two options for plant variety protection are available to the developer of a variety. The first option enables the developer and certificate holder to sell either certified or uncertified seed of the variety. Certificate holders choosing this option must resort to civil action if their rights are infringed upon within the period of protection.

These certificate holders are not covered under Title V of the Federal Seed Act nor the Colorado Seed Act and violators cannot be prosecuted by the federal or state government. In a manner similar to patent rights, certificate holders can authorize the use of their varieties in any way they wish on a royalty or free basis.

The second option for protecting a variety is the "Certification only" option that utilizes the provisions of Title V of the Federal Seed Act and Section 35-27-113 (g) (h) of the Colorado Seed Act. Violators of these laws may be prosecuted by the federal or state government. A variety protected in this manner may be sold only as a class of Certified seed. Sales of uncertified seed by variety name are in violation of both the certificate owner rights and the federal and state seed laws.

Most state institutions and some private companies have chosen to protect their varieties under the Title V option. Violations of any provision, rule or regulation of the Federal Seed Act is a misdemeanor punishable by a fine not to exceed \$2,000. Violation of any rule or regulation of the Colorado Seed Act is a misdemeanor punishable by a fine not to exceed \$2,500. Farmers who wish to produce seed of



Quick Facts

- The Plant Variety Protection Act provides developers of new varieties of plants patent-like rights that protect the reproduction and distribution of their varieties.
- Varieties that are protected under the Plant Variety Protection Act can be sold as seed stocks only with permission of the certificate holder and in some cases, only as a class of Certified seed.
- Varieties that are protected must have labels on the seed containers indicating the type of protection.
- Farmers may save a limited amount of seed for replanting on their farm, but cannot sell it to anyone without permission of the owner.

*B. Erker, former director, Colorado Seed Programs; M.A. Brick, Colorado State University professor, soil and crop sciences.

**H. Schwartz, Extension specialist and professor, bioagricultural sciences and pest management. 9/2014



protected varieties for sale must obtain authorization from the owner of the certificate.

Some acts performed without authority of the certificate owner, which constitute infringement of the owner's rights, include:

- Using seed marketed as “unauthorized propagation prohibited” to produce seed of the variety to market for growing purposes.
- Selling, offering, delivering, consigning, exchanging or advertising for sale a protected variety.
- Dispensing the variety to another person without informing that person that the variety is protected.
- Importing the variety into the United States or exporting the variety from the United States.
- Inducing a third party to commit any of the above acts.

In addition to the above infringements, sales of varieties whose Certificate of Protection was issued under the amended act are subject to further regulations:

- Seed of protected varieties must be sold by variety name.
- Conditioners who knowingly clean seed of protected varieties for sale are subject to the same penalties imposed on the seed sellers. The amount of seed conditioned for a farmer cannot exceed the amount the farmer will use for planting on the farm that produced the seed.
- The amended PVP Act requires that if grain from a protected variety is in a form that could be propagated, notice must be provided with the grain that it is a protected variety for which unauthorized multiplication is prohibited.

Identifying Protected Varieties

It is the responsibility of the seller to inform the buyer if a variety is protected. Seed containers should be labeled indicating the type of protection for which the owner has applied. If the owner of the variety has chosen to sell either uncertified or certified seed, the label should state “Unauthorized propagation prohibited – U.S. protected variety.” This statement, or others similar to it as defined in the act, is sufficient notification of protection. If the seed is purchased in bulk, the appropriate statement should be printed on the bulk sales certificate.

Exemptions Under the Act

The amended PVP Act allows for only two exemptions, 1) a farmer's exemption allows for saving a quantity of seed for the sole use of replanting on the farmer's land an area no larger than the area that was planted to the original seed purchased. Sale of any quantity of seed protected under the amended act is prohibited; and 2) a research exemption allows for the use of protected varieties or plant parts for breeding to develop a new variety.

Further Information

This publication does not include information pertaining to the application procedure or eligibility requirements of varieties for protection. It is intended for consumers who purchase, produce and distribute seed stocks. For further information regarding the PVP Act or Title V, or a listing of protected varieties, contact either Colorado Seed Growers Association, Colorado State University, Fort Collins, Colorado 80523; (970) 491-6202, (www.seeds.colostate.edu) or The Plant Variety Protection Office, 10301 Baltimore Avenue, Room 401, Beltsville, MD 20705-2351, (www.ams.usda.gov/science/pvpo/PVPindex.htm).