

PVP - U.S. Plant Variety Protection Act as Amended 1994

Summary of Key Provisions

- A new crop variety can take 10 years and \$1 million to breed. The breeding of new varieties for the future depends on respect for the PVP law and the property rights of plant breeders, and the purchase of seed from authorized sources that help support the plant breeding programs.
- It is illegal for a grower to condition, or have conditioned, seed of a protected variety without authorization from the owner of the PVP rights unless the seed is to be planted on the grower's own holdings.
- A grower can legally have a custom conditioner clean seed of a PVP-protected variety that the grower has grown and saved, but the seed must be handled, cleaned, and stored without any mixing with seed of the same or different variety from any other grower.
- The amended PVP Act prohibits all unauthorized sale, trade, or transfer of seed of protected varieties, including sale or transfer of seed or grain for planting from one grower to another.
- Purchased grain of a protected variety cannot be used for planting.
- Violators of PVP can be liable for triple damages plus costs. Damages can include the value of the grain harvested from the crops grown from seed planted in violation of PVP.

Plant Variety Protection Act As Amended in 1994 - Its Significance for Crop Producers

Importance of Plant Variety Protection for U.S. Agriculture

The original Plant Variety Protection Act (PVP) was enacted in 1970 to encourage the development and availability of improved crop varieties, and thereby promote progress in agriculture in the public interest. In 1994 the Act was amended to better achieve those goals.

The amendments, and a recent Supreme Court ruling, have substantially strengthened protection provided by the PVP Act for crop varieties. These developments have come at a critical time.

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U.S. agriculture continues to be weakened by the decline in funding for plant breeding on crop varieties.

The number and size of private programs breeding crop varieties continue to decrease.

Universities are reducing their breeding programs and looking to licensing fees as a means of financial support.

Unauthorized seed sales deprive both public and private plant breeding programs of the revenue needed to motivate and support additional research.

Respecting the PVP Act is critical for encouraging the supply of improved crop varieties, and maintaining the competitiveness of your farm business.

Development of a new crop variety takes on average 10 years and \$1 million.

Unless the property rights of plant breeders are respected, investment needed for improved varieties will not be made.

Without that investment, farmers and agribusinesses that depend on those varieties will not be competitive with other regions and crops that do support investment in research.

Key Role that You Play

The seed purchases made by you and your neighbors determine what plant breeding will be done for your needs. By respecting the law and the property rights of plant breeders, you support plant breeding that benefits you.

Important Provisions of the Amended PVP Act

The amended PVP Act prohibits all unauthorized seed sales or other transfers of protected varieties for planting, ***including sale or other transfer of seed from one farmer to another.***

The seed you buy of a PVP protected variety includes the right to use the genetics of that variety on your farm, just as you would use computer software, for example; it does not include the right to reproduce the product to sell for planting to someone else.

Farmers can produce and replant seed of a protected variety on the farm where the seed was produced, but cannot sell, trade, or transfer the seed by any other means to any one else for planting purposes.

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Selling, trading, or otherwise transferring seed for planting is a violation even if the name of the variety is not indicated. For wheat, triticale, and most other crops, failure to use the name of a variety for which a certificate of protection has been issued is prohibited, that is, "VNS" (variety not stated) sales of protected varieties are prohibited.

The amended PVP Act prohibits unauthorized participation in seed multiplication of a protected variety as a step in marketing seed for planting, even if that marketing would be done by someone else.

Violators can be liable for triple damages plus costs. Damages can extend to the product harvested from unauthorized seed, becoming a multiple of the value of the original seed.

For example, as described by Jim Swanson, North Dakota State Seed Department: A producer buys enough "brown bag" seed to plant 100 acres. The producer produces 4000 bushels of "grain" from the planted "brown bag" seed. The owner of the variety could recover damages based on the 4000 harvested bushels. The Act provides that a violator can be liable for up to triple the damages plus attorneys' fees.

The amended PVP Act prohibits the unauthorized conditioning of seed of a protected variety except for seed conditioned for planting by the farmer who grew that seed. Seed being conditioned for one farmer must be kept separate from the seed from other farmers. The amount conditioned for a farmer cannot exceed the amount the farmer will use for planting on the farm that produced the seed. Seed cannot be transferred from one farmer to another.

A Comment about Saved Seed

For many crop producers, the wisest decision is to purchase professionally produced seed instead of conditioning and planting-back grain from a previous crop.

Research has shown that almost always crop production is more profitable using professionally produced seed instead of "saved" seed.

The legal necessity of handling seed from each farmer separately puts a tremendous logistical burden on the conditioner, and exposes both the grower and conditioner to the risk of violations and liability for up to triple damages plus costs.

Perhaps most important in the long run, purchasing high-quality seed from authorized sources supports plant breeding for the development of improved varieties for your needs.