

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

### **Summary of Key Provisions**

- 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.
- Seed being conditioned for one grower cannot be co-mingled with seed from another grower at any time during handling, conditioning, or storage.
- Purchased grain of a protected variety cannot be used for planting.
- To avoid violating the law and risking substantial liability, the American Seed Trade Association suggests that conditioners take steps to insure that the seed being conditioned for a grower is for use on a grower's own holdings.
- It is illegal to assist in any way in the unauthorized sale of a PVP protected variety.

### **Plant Variety Protection Act As Amended in 1994 - Its Significance for Seed Conditioners & Marketers**

#### **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 October of 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 come at a critical time for encouraging both the private and public breeding of improved varieties needed to maintain the competitiveness of U.S. agriculture.

The amended Act prohibits engaging in, instigating, or actively inducing any of the following acts: selling, marketing, offering, exposing for sale, delivering, shipping, consigning, exchanging, soliciting an offer to buy, or any other transferring of title or possession without authorization of the owner of the protected variety.

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Violators can be liable for triple damages plus attorney' fees. Damages can extend to product harvested from unauthorized seed, thereby significantly multiplying those damages.

### **Conditioning Farmers' Seed**

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.***

For example, as described by Jim Swanson, North Dakota State Seed Department: A producer brings 5000 bushels of a protected variety to a conditioner for conditioning. The conditioner has knowledge that the producer farms only 1000 acres. There is likely an excess of 3000 bushels being conditioned that the producer cannot use on his own farm. What would be the extent of the conditioners liability? The Act provides that a violator can be liable for up to triple the damages plus attorney' fees. Also, the conditioner can be liable for inducement of infringement of the PVP certificate.

### **Unauthorized Use of Variety Name**

The amended PVP Act asserts that if seed is sold without authorization under the name of a variety shown in a PVP certificate, there is a prima facie presumption that it is the same variety and therefore a violation.

### **Sale of Grain**

The amended PVP Act requires that if grain from a protected variety is in a form that could be propagated, then notice must be provided with the grain that it is a protected variety for which unauthorized multiplication is prohibited.

### **Varieties that are "Essentially Derived" from a Protected Variety**

The amended PVP Act encourages bona fide plant breeding by prohibiting unauthorized sale of seed of varieties that are "essentially derived" from the protected variety, including varieties originating from plant selections, mutations, or variants.