

## **What is the U.S. Plant Variety Protection Act (PVPA)?**

The U.S. Plant Variety Protection Act (PVPA) was enacted by Congress in 1970 to encourage the development of new varieties of crops and to make them available to the public. The protection enables the collection of royalties that, in turn, provide funding for development of other new varieties. Overall, the PVPA promotes progress in all segments of agriculture and ultimately benefits the American consumer.

## **Why do we need the PVPA?**

Prior to 1970, variety development in the United States was, for the most part, conducted by publicly financed institutions. The development of new varieties enabled farmers to reduce losses from destructive crop pests and it brought about improvements in quality of the crop produced. In spite of this, funding for variety development did not increase to keep pace with the needs of farmers and in some cases, it began to decrease. As a result, fewer new varieties were developed. New sources of funding were needed in order for American farmers to remain competitive. Enactment of the PVPA in 1970 made it possible for royalties to be collected by the owner of a variety in the hope that it would provide a more stable and consistent source of funding for future variety development. In the first 25 years this law has been in effect, thousands of new varieties have been developed and protected by both public institutions and private companies.

The original law was very successful in stimulating an increase in variety development. However, in recent years, enforceability became a problem because the law did not give clear guidance in determining when a violation had taken place. Not being able to adequately enforce the PVPA caused unauthorized

production and sale of protected varieties to increase. The resulting nonpayment of royalties caused many breeding programs to be cut back, and some were eliminated completely.

Amendments to the PVPA in 1994 and a decision by the U.S. Supreme Court in 1995 changed the enforceability of the law significantly.

## **How has compliance with the PVPA changed?**

The PVPA was amended by Congress in 1994. Those changes took effect on April 4, 1995. The amended PVPA will affect only varieties that receive protection after the effective date of the amended law.

The most important and far-reaching change is a U.S. Supreme Court decision handed down on January 15, 1995. The decision involved a PVPA infringement case between a farmer in Iowa and a major seed company. Both the old and newly amended PVPA give a "farmer the right to save seed" of a crop produced from a protected variety. The court decision changed the amount allowed under the "farmer's right to save seed." Prior to the decision, the PVPA was generally interpreted to mean that a farmer could save for, reproductive purposes, up to half the crop produced from a protected variety. The U.S. Supreme Court interpreted the PVPA to mean that a farmer could only save the amount of seed of a protected variety necessary to plant their own farm.

## **How is the PVPA enforced?**

The PVPA gives the owner of a protected variety the right to seek damages for lost royalties when a person or firm sells or participates in the sale of a protected variety without authorization. To collect damages, the owner of the protected variety must bring suit against the person or firm infringing on their PVPA rights. A court may order the payment of

up to three times the amount of the royalty lost, plus costs for the action. Under the amended PVPA, anyone assisting a farmer to sell seed of a protected variety without authorization may also be subject to triple damages. In addition, the amended PVPA gives the owner of a protected variety the ability to seek damages on the crop produced from unlawfully obtained seed of a protected variety.

The developers of varieties which reproduce by seed may establish their ownership and obtain legal protection through the PVPA. Two options are available to the developer under the PVPA.

Under one option the developer of the variety or his agent protects his rights through contractual agreements and may sell either certified or uncertified seed of the variety.

The other option utilizes the provision of Title V of the Federal Seed Act (FSA) often called the certification option. A variety protected under this option may be legally sold by variety name only as a class of certified seed

The Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) is responsible for enforcement of the Wisconsin Seed Law. In the unlawful acts section of the seed law, the Federal Plant Variety Protection Act is identified as a provision. By cooperative agreement with the Federal Seed Regulatory and Testing Branch of the United States Department of Agriculture, WDATCP is also responsible for assisting with enforcement of the FSA within the state. WDATCP Plant Industry and Agri-Chemical Management (ACM) regulatory staff, plays a lead role in the enforcement of the Wisconsin Seed Law and also the PVPA. In addition, there are 7 Plant Industry and 15 ACM enforcement specialists located throughout the state. One of

their duties is to enforce the Wisconsin Seed Law and the PVPA.

### What can a farmer do with a crop produced from seed of a protected variety?

The PVPA only affects seed that is intended for reproductive purposes. If farmers sell their crop through normal channels at the cash grain price, the crop is not considered to be used for reproductive purposes. When more than market price is paid or the variety name is used in making the sale, it would be considered as used for reproductive purposes.

A "farmer's right to save seed" means that they can save seed of a protected variety for reproductive purposes, but there are differences between the old and the newly amended PVPA in how it may be used. For varieties:

- protected before April 4, 1995, a farmer can either sell or plant the amount saved as long as an advertisement or other third party is not used to make the sale;
- protected on or after April 4, 1995, farmers cannot sell the saved seed, but they can use it for planting purposes on their own farm.

### How can a farmer tell if a variety is protected?

The terms "U.S. Protected Variety - Unauthorized Propagation Prohibited" will appear on the label of a protected variety. The symbol **pvp** also is often used to denote a protected variety. For those varieties protected under the newly amended PVPA, special labeling will identify them as being subject to the new PVPA.

### Keep records/Protect yourself

One way to protect you in seed cleaning operations is to document on invoices the following information:

Name \_\_\_\_\_

Phone \_\_\_\_\_

Address \_\_\_\_\_

Variety \_\_\_\_\_

Kind \_\_\_\_\_

Quantity conditioned \_\_\_\_\_

**Seed Owner Declaration**

The seed documented above is: (check one only)

Not of a Plant Variety Protected variety

To be used only for planting on my own holdings

Signature \_\_\_\_\_ Date \_\_\_\_\_

### Where can a farmer or a seed business find out more about the PVPA and other seed laws?

For more information about how to comply with these laws, telephone (608) 224-4596 or write WDATCP, Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708-8911.

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# WARNING!



Know the seed you label.

Variety protection regulations have changed.