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# Protected varieties and the Plant Variety Protection Act

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## Quick Facts

The Plant Variety Protection Act provides developers of new varieties of plants patent-like rights that protect the reproduction 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 should have labels on the seed containers indicating the type of protection.

Farmers may save the seed they grow for replanting, but in most cases cannot sell it to anyone else without authorization from the certificate holder.

violating the owner's rights. The damages awarded by a court must at least compensate the certificate owner for the infringement. The term of the protection expires 18 years after the Certificate of Protection is issued.

## 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 18-year period.

Certificate holders are not covered under Title V of the Federal Seed Act nor the Colorado Seed Law 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 "certificate only" option that utilizes the provisions of Title V of the Federal Seed Act and Section 35-27-107 (i)(j) of the Colorado Seed Law. Violators of these laws may be prosecuted by the federal or state government. A variety protected in this manner may be sold only by variety name as a class of certified seed. Sale of uncertified seed by variety name is 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 this option. Violations of any provision, rule or regulation of the Federal Seed Act is a misdemeanor punishable by a fine of not more than \$1000 for first conviction and not more than \$2000 for a second conviction. Violation of the Colorado Seed Law is a misdemeanor punishable by a fine of not more than \$200 for the first offense and not more than \$500 for any offense thereafter. Farmers who wish to produce seed of protected varieties for sale must obtain authorization from the owner of the certificate.

The Plant Variety Protection Act (PVPA) was signed into law on December 24, 1970. This act is a voluntary program that provides patent-like rights to breeders and developers of plant varieties reproduced by seed. Such crops as potatoes that are asexually propagated are not covered by the PVPA but may be covered by the Plant Patent Act of 1930.

The primary purpose of the PVPA was to allow plant breeders to protect their non-hybrid varieties to ensure that they would benefit from their development and enable them to recover their research cost. Without the PVPA, the only protection available to breeders was the biological protection of hybrids; 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

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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 or advertising for sale a protected variety.
- Dispensing the variety to another person without informing that person 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.

### **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." For the other option that utilizes the provisions of Title V of the Federal Seed Act, the label should state "Unauthorized propagation prohibited—to be sold by variety name only as a class of certified seed—U.S. protected variety." If the seed is purchased in bulk, the appropriate statement should accompany the bulk sales certificate.

### **Exemptions Under the Act**

The PVPA specifies a farmer exemption clause that may be used by a grower who is not

involved with the production of crops for seeding purposes. This exemption applies to both varieties that are protected by the PVPA and those protected under the "certification only" option of the Federal Seed Act.

Farmers whose primary occupation is the production of crops for food or feed, and who have obtained seed of a protected variety may 1) save seed for their own use from personal crop production, or 2) sell seed to another farmer, but the second farmer may not sell seed from personal crop production.

Seed producers, seed dealers and elevator operators may not sell protected variety seed without the seed owner's permission.

The Secretary of Agriculture may declare a variety "open to public use" to supply the country with adequate food, fiber or feed under exceptional conditions. This action would be taken only if the owner of a certificate is unwilling or unable to supply the public need for the variety at a fair price. However, the owner of the certificate would be compensated for the public use.

### **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 PVPA or Title V, contact either Mark Brick, Colorado Seed Growers Association, Colorado State University, Fort Collins, CO 80523 (phone: 303/491-6202) or James Thurman, Colorado Department of Agriculture, 1525 Sherman Street, Denver, CO 80203 (phone: 303/839-2811).