

§ 2544. Research exemption

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this chapter.

(Pub. L. 91-577, title III, §114, Dec. 24, 1970, 84 Stat. 1555.)

§ 2545. Intermediary exemption

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this chapter.

(Pub. L. 91-577, title III, §115, Dec. 24, 1970, 84 Stat. 1555.)

PART L—REMEDIES FOR INFRINGEMENT OF
PLANT VARIETY PROTECTION, AND OTHER AC-
TIONS

§ 2561. Remedy for infringement of plant variety protection

An owner shall have remedy by civil action for infringement of plant variety protection under section 2541 of this title. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

(Pub. L. 91-577, title III, §121, Dec. 24, 1970, 84 Stat. 1556; Pub. L. 103-349, §13(t), Oct. 6, 1994, 108 Stat. 3144.)

AMENDMENTS

1994—Pub. L. 103-349 struck out “his” before “plant” in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

§ 2562. Presumption of validity; defenses

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 2402 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 2422 of this title; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to the infringement; and (5) any other fact or act made a defense by this chapter.

(Pub. L. 91-577, title III, §122, Dec. 24, 1970, 84 Stat. 1556.)

§ 2563. Injunction

The several courts having jurisdiction of cases under this subchapter may grant injunctions in

accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

(Pub. L. 91-577, title III, §123, Dec. 24, 1970, 84 Stat. 1556.)

§ 2564. Damages

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

(Pub. L. 91-577, title III, §124, Dec. 24, 1970, 84 Stat. 1556.)

§ 2565. Attorney fees

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(Pub. L. 91-577, title III, §125, Dec. 24, 1970, 84 Stat. 1556.)

§ 2566. Time limitation on damages

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that the claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

(Pub. L. 91-577, title III, §126, Dec. 24, 1970, 84 Stat. 1556; Pub. L. 103-349, §13(u), Oct. 6, 1994, 108 Stat. 3144.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-349 substituted “the” for “his” before “claim has been denied”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

§ 2567. Limitation of damages; marking and notice

Owners may give notice to the public by physically associating with or affixing to the con-