

person, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

(Pub. L. 91-577, title III, §112, Dec. 24, 1970, 84 Stat. 1555; Pub. L. 103-349, §13(r), Oct. 6, 1994, 108 Stat. 3144.)

#### AMENDMENTS

1994—Pub. L. 103-349 substituted “the successor in interest of the person” for “his successor in interest”.

#### 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.

### § 2543. Right to save seed; crop exemption

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 2541<sup>1</sup> of this title, it shall not infringe any right hereunder for a person to save seed produced by the person from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on the farm of the person, or for sale as provided in this section. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 2567 of this title that the actions of the purchaser constitute an infringement.

(Pub. L. 91-577, title III, §113, Dec. 24, 1970, 84 Stat. 1555; Pub. L. 103-349, §§10, 13(s), Oct. 6, 1994, 108 Stat. 3142, 3144.)

#### REFERENCES IN TEXT

Subsections (3) and (4) of section 2541 of this title, referred to in text, probably means paragraphs (3) and (4) of section 2541 of this title, which were redesignated subsection (a)(3) and (4) of section 2541 of this title by Pub. L. 102-560, §3(a), Oct. 28, 1992, 106 Stat. 4231.

#### AMENDMENTS

1994—Pub. L. 103-349, §§10, 13(s)(1), in first sentence substituted “produced by the person” for “produced by him”, “the farm of the person” for “his farm”, and “section.” for “section: *Provided*,” That without regard to the provisions of section 2541(3) of this title it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable.”

Pub. L. 103-349, §13(s)(2), substituted “the actions of the purchaser” for “his actions” in third 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.

<sup>1</sup> See References in Text note below.

### § 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 ACTIONS

### § 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 notice of 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-

tainer of seed of a variety or by fixing to the variety, a label containing either the words “Unauthorized Propagation Prohibited” or the words “Unauthorized Seed Multiplication Prohibited” and after the certificate issues, such additional words as “U.S. Protected Variety”. In the event the variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

(Pub. L. 91-577, title III, §127, Dec. 24, 1970, 84 Stat. 1557; Pub. L. 96-574, §19(b), Dec. 22, 1980, 94 Stat. 3351; Pub. L. 103-349, §11, Oct. 6, 1994, 108 Stat. 3142.)

#### AMENDMENTS

1994—Pub. L. 103-349 in first sentence struck out “novel” before “variety or” and before “variety, a”, and in second sentence struck out “novel” before “variety is distributed”.

1980—Pub. L. 96-574 substituted “either the words ‘Unauthorized Propagation Prohibited’ or the words ‘Unauthorized Seed Multiplication Prohibited’” for “the words ‘Propagation Prohibited’”.

#### 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.

#### § 2568. False marking; cease and desist orders

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually or asexually reproducible plant material or tubers or parts of tubers, is prohibited, and the Secretary may, if the Secretary determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 2461 of this title:

(1) Use of the words “U.S. Protected Variety” or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of either the phrase “Unauthorized Propagation Prohibited” or “Unauthorized Seed Multiplication Prohibited” or similar phrase without reasonable basis. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(4) Failure to use the name of a variety for which a certificate of protection has been issued under this chapter, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed