

# **LAW ON THE PROTECTION OF PLANT VARIETIES\***

(No. 12/1975 of March 12, 1975)

## **I. PURPOSE AND SCOPE OF THIS LAW**

### **Section 1**

The purpose of this Law is to recognize and to ensure to the breeder of a new plant variety protected by a "Plant Variety Title" and to his successor in title, a right, the content and conditions of exercise of which are defined in the following Sections.

This Law may be applied to all botanical genera and species.

## **II. DEFINITION OF THE PLANT VARIETIES COVERED BY THE PROTECTION AND DEFINITION OF THE BREEDER**

### **Section 2**

For the purpose of this Law, "plant variety" means any commercial variety (internationally known as a "cultivar"), clone, line, stock or hybrid that satisfies the conditions established in this Law.

### **Section 3**

"Breeder" means any natural person or legal entity who proves that he is responsible for any improvement, selection or discovery by which a new plant variety has been obtained in compliance with the requirements established by this Law.

## **III. CONDITIONS REQUIRED FOR PROTECTION OF A PLANT VARIETY**

### **Section 4**

(1) For a variety to be eligible for protection under this Law it has to:

- (a) be differentiated from existing varieties by one or more important morphological or physiological characteristics which fluctuate little and are susceptible of precise description and recognition;
- (b) be homogeneous in the totality of its characteristics, according to its system of reproduction or multiplication;
- (c) be stable in its essential characteristics, in other words, remain true to the definition given by the breeder at the end of each cycle of multiplication.

(2) The verification of whether a variety meets the above conditions constitutes the "preliminary examination" for which rules shall be made.

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\* Spanish title: Ley 12/1975 de 12 de marzo de Protección de las Obtenciones Vegetales  
Source: Boletín oficial del Estado No. 63, March 14, 1975

(3) A variety shall not be considered new for the purposes of this Law when, at the time of the application for a “Plant Variety Title,” it has already been marketed or offered for sale in Spain, with the authorization of the breeder or his successors in title, or more than four years previously in any foreign country, or where it has been the subject of sufficient advertising of any kind to be used.

Similarly, the variety shall not be considered new if it is described in an application for a “Plant Variety Title,” in a title that has not yet been published or in an application filed abroad that benefits from the priority provided for in [Section 10\(3\)](#) of this Law.

In no case shall the sole fact that it has been recorded as such in an Official Register be regarded as destructive of novelty.

(4) For the purposes of this Law, the following shall not be regarded as marketing:

- (a) presentation at contests, collections or exhibitions, insofar as no commercial transactions take place at them;
- (b) production and distribution on an experimental scale.

## **IV. RIGHTS OF THE BREEDER**

### **Section 5**

(1) Any breeding of a new plant variety may be the subject matter of a “Plant Variety Title” which, on recording thereof in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, gives the holder the exclusive right to produce, introduce in the territorial area to which this Law applies, sell or offer for sale, or use by any means permissible by law material for sexual reproduction or vegetative propagation. The breeder’s right shall extend to plants or parts thereof normally marketed for purposes other than propagation, especially as regards the commercial production of ornamental plants or cut flowers, insofar as those plants or parts thereof are used as propagating material. The breeder’s right shall not be infringed by the use made by a farmer, in his own farm, of seeds or any other plant material produced by him.

(2) Authorization by the breeder or his successors in title shall not be required either for the utilization of the new variety as an initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties.

(3) Authorization shall be required when the repeated or systematic use of the plants or parts thereof of the original variety is necessary for the commercial production of plants or propagating material of the new variety.

### **Section 6**

(1) The grant and the benefits of the “Plant Variety Title” for a new variety may not be made subject to conditions other than those set forth in [Sections 4](#), [10](#) and [11](#) of this Law, insofar as the administrative formalities provided for in this Law and in rules made thereunder are complied with.

(2) A “Plant Variety Title” shall be granted without prejudice to the rights of third parties and subject to the limitations established by this Law. Failure to observe those limitations shall render the Title null and void in accordance with the provisions of [Section 11](#) of this Law and, where appropriate, the cancellation of its registration in the Register of Protected Varieties at the National Institute of Seeds and Nursery Plants.

(3) The holder of a “Plant Variety Title” may, after notification to the Registry of Protected Plant Varieties, grant a license for the use of the variety covered by the said Title to any person

who applies for one, subject to compliance with the conditions specified by the said holder and with any provisions on the subject in this Law and rules made thereunder. To this end, such contracts shall be registered at the National Institute of Seeds and Nursery Plants.

(4) Where the holder of a “Plant Variety Title” is an official body established in Spain, it shall be obliged to grant a license for the use of the variety covered by the said Title to any person who applies for one and presents legal, technical and professional guarantees. Such license may in no case have exclusive character. Where the applicant for a license is a foreigner, the transaction shall be governed by the principle of reciprocity.

## Section 7

(1) The Courts of Justice shall be competent in all questions relating to the ownership of a “Plant Variety Title.”

(2) The holder of a “Plant Variety Title” may institute civil or criminal proceedings before the Courts of Justice against any person who infringes the rights granted by this Law.

(3) Legal proceedings concerning plant breeders’ rights may only be instituted by one of the parties.

(4) Plant breeders’ rights are transferable by any means admitted in law, without prejudice to the limitations established by this Law; such transfer shall only be effective in relation to third parties when they have been recorded in the Register of Protected Plant Varieties.

(5) Unless expressly agreed otherwise, the licensee may be party to legal proceedings to the same extent as the holder of a “Plant Variety Title” without any formality other than notification in writing to the holder of having become a party to the legal proceedings, in the event that the latter should think it advisable to be a party.

## Section 8

(1) The “Plant Variety Title” shall be granted by Order of the Ministry of Agriculture, on a proposal by the Central Board of the National Institute of Seeds and Nursery Plants, pursuant to [Section 16](#) of this Law.

(2) The grant of a “Plant Variety Title” shall immediately give rise to an entry in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, which is mentioned in Law No. 11/1971, and to the inclusion of the variety in the list of protected varieties which shall be periodically published by the above-mentioned Institute in the “Boletín” mentioned in [Section 17](#) of this Law.

(3) The “Plant Variety Title” shall be provisional for two years, after which time it shall automatically become definitive if, within that two-year period, no objection is submitted to the act of making the said grant. Once definitive, either because the provisional period has expired, or by decision made on the above-mentioned objection pursuant to [Section 121](#) of the Law on Administrative Procedure, the appropriate legal proceedings may be brought. The provisional character of the Title, while in force, shall be clearly stated on any document, packaging or advertisement relating to the product covered by the said Title.

(4) During the period in which the Title is provisional, the breeder shall enjoy all the rights granted under this Law. The said period shall be included, in each case, in the period of protection.

## Section 9

(1) The rights conferred on the breeder of a new plant variety shall be granted for a limited period, which may not be less than 15 years for herbaceous plants or 18 years for trees; this period shall run from the date of the grant of the “Plant Variety Title.”

(2) For each species or group of species the period of protection, which shall never exceed 20 years, shall be established by rules.

## Section 10

(1) All foreign breeders shall enjoy the same rights as national breeders, provided that the legislation of their countries of origin applies the principle of reciprocity or that other international agreements to which Spain is party establish such reciprocity.

(2) The aforementioned foreign breeders shall, in their relations with the Spanish Public Administration and with the private producers or growers of the propagating material, be represented by a person lawfully resident in Spain, who shall be given sufficient authority to guarantee such commitments as the breeder or his successors in title may contract. The grant and the rights derived from it shall remain subject, in all cases, to the performance of the obligations of the Title holder.

(3) When applying for a “Plant Variety Title,” the applicant may claim the priority of any applications previously filed for the same plant variety in any State with which Spain has an agreement in this respect, on condition that the filing of the application in Spain takes place within a period of 12 months from the filing of the first application.

## Section 11

(1) The “Plant Variety Title” shall be declared null and void:

- (a) when the Title holder does not have a right to obtain it according to the provisions laid down in [Section 3](#) of this Law;
- (b) when the plant variety in respect of which the Title has been granted does not meet the requirement of novelty laid down in [Section 4](#) of this Law.

(2) Action for nullity may be brought by any interested party during the entire period of protection afforded by the “Plant Variety Title.”

(3) The right of the breeder or his successors in title shall be extinguished in the following cases:

- (a) at the request of the Title holder himself;
- (b) when there has been a failure to maintain the conditions of homogeneity and stability laid down in [Section 4](#) of this Law;
- (c) when neither the Title holder nor his licensees have reproductive or propagating material capable of producing the new variety, as defined when the “Plant Variety Title” was granted;
- (d) when neither the Title holder nor his licensees submit, within the required time limit, the reproductive or propagating material, or the information or documents deemed necessary for examining the variety, or do not allow inspection of the measures which have been taken for the maintenance of the same variety, according to the requirements which shall be established by rules;

- (e) when the legally established fees have not been paid within the prescribed period or the requests for payment have not been met;
- (f) when the Title holder does not agree to grant a license to use the new variety, pursuant to [Section 12\(1\)](#) of this Law;
- (g) when an objection or administrative appeal, filed pursuant to [Section 8\(3\)](#) of this Law, has been upheld by a final and definitive decision;
- (h) when the period of time laid down by [Section 8](#) of this Law expires.

(4) Upon the extinction, for whatever reason, of the right of the breeder or his successors in title, the plant variety protected by that right shall fall into the public domain.

## **Section 12**

(1) The Ministry of Agriculture shall be entitled to order that a plant variety for which a “Plant Variety Title” has been granted shall be subject to compulsory licensing, in compliance with the conditions to be established by rules, either because of unjustified failure to use or because the public interest so dictates.

(2) For the purposes of [Subsection \(1\)](#) of this Section, any person providing legal, technical and professional guarantees may apply to the Ministry of Agriculture for the grant of a compulsory license for use, which shall in no case be exclusive.

(3) In case the licence for use referred to in the preceding Subsections is granted, the right of the breeder shall at all times be guaranteed.

## **V. DENOMINATION OF VARIETIES**

### **Section 13**

(1) A new plant variety shall be given a single denomination which permits its identification. Such denomination shall be considered the generic designation of the variety.

(2) The denomination of the new variety shall not be exclusively composed of figures, or be liable to mislead or cause confusion concerning its characteristics, its usefulness or the identity of the breeder. It shall be different from every denomination which designates other existing varieties of the same or closely-related botanical species and be adapted to the provisions of the standards of nomenclature laid down by the rules and the international agreements on this subject to which Spain is party.

(3) A plant variety may not be denominated in a way different from that used in the first country in which it has been registered, except in the cases to be laid down in rules; in such cases, subject to approval, a translation of the original denomination or a different one may be used.

### **Section 14**

(1) The denomination of a new plant variety shall be registered at the same time as the issuance of the “Plant Variety Title.”

(2) The breeder or his successor in title may not submit as the denomination of a new variety either a denomination already protected in Spain or in countries with which agreements on plant variety protection have been established, by a trademark relating to identical or similar products or a denomination liable to cause confusion with such a trademark, unless he undertakes to renounce his rights in the trademark as from the grant of the “Plant Variety Title.” If the breeder or his

successor in title nevertheless submits such a denomination, he may not, as from the time when the “Plant Variety Title” is registered, continue to exercise his rights under the trademark in respect of the products specified, unless international agreements require otherwise.

(3) If the denomination submitted by the breeder or his successor in title does not satisfy the requirements laid down by this Law, the Ministry of Agriculture shall request that a new denomination be proposed.

(4) Before a “Plant Variety Title” is entered in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, the denomination submitted for the new plant variety shall be notified to the Industrial Property Registry, in order that the latter may report on it.

(5) The denomination given to a protected plant variety may not be registered as a trademark.

(6) Notwithstanding the foregoing Paragraph, it shall be permitted, for marketing purposes, to add a trademark to the denomination of the new plant variety, if the breeder owns the trademark or is authorized to use it.

## **VI. BODY IN CHARGE OF PLANT VARIETY PROTECTION**

### **Section 15**

The functions entrusted to the Ministry of Agriculture under this Law shall be exercised by the National Institute of Seeds and Nursery Plants, established by Law No. 11/1971 of March 30, 1971.

### **Section 16**

The Commission of Plant Variety Protection, established within the Central Board of the National Institute of Seeds and Nursery Plants, organized by Law No. 11/1971 of March 30, 1971, shall be composed as follows:

President: the President of the Central Board of the National Institute of Seeds and Nursery Plants;

Vice-President: the Director of the National Institute of Seeds and Nursery Plants;

Legal Adviser: the Head of the Legal Department of the Ministry of Agriculture;

Technical Advisers: persons with recognized competence in botany, genetics, reproduction of seeds and nursery plants and legal problems relating to plant variety protection, appointed by the President;

Members: those members of the Central Board appointed by its President, among whom there shall be a representative of the National Institute of Agrarian Research and two agrarian representatives of the Trade Union Organization;

Secretary: the Technical Administrator of Laboratories and Registers of Protected Commercial Varieties.

The Commission of Plant Variety Protection shall:

- (a) propose to the Minister for Agriculture, through the Central Board of the Institute, the issuance, revocation, declaration of lapse and, if appropriate, annulment of “Plant Variety Titles”;
- (b) propose to the Minister for Agriculture, through the Central Board of the Institute, the measures and rules intended for the protection of breeders’ rights;

- (c) propose rules for the application of breeders' rights to the different genera or species;
- (d) report on matters concerning plant variety protection submitted by the President for study;
- (e) carry out any other tasks which may be entrusted to it by any law or rules.

## **Section 17**

(1) The National Institute of Seeds and Nursery Plants shall periodically publish a Boletín del Registro de Variedades Protegidas, in which applications for registration, denominations submitted and denominations approved shall be recorded, as well as the grant of "Plant Variety Titles" and other non-confidential information, in order to ensure better public knowledge of the area concerned.

(2) It shall also issue such reports as are requested of it by the Courts of Justice concerning breeders' rights.

## **VII. INFRINGEMENT AND PENALTIES**

### **Section 18**

(1) For the purposes of [Section 7](#), any person who infringes breeders' rights in any of the following ways shall incur civil liability, and be obliged in all cases to furnish compensation for the damage and loss caused thereby:

- (a) producing for commercial purposes or marketing reproductive material of the protected plant variety, in disregard of the provisions of [Section 5\(1\)](#);
- (b) marketing plants or parts thereof normally marketed for purposes other than propagation, if they are then used as propagating material, in disregard of the provisions of [Section 5\(1\)](#);
- (c) repeatedly using reproductive material of a protected plant variety for the production of propagating material of a new plant variety;
- (d) contracting for the transport of the propagating material of a protected plant variety to a territory outside the scope of application of this Law, without special authorization from the Title holder.

(2) All those making any other use of the protected plant variety or those who in any other way infringe the breeders' rights granted by this Law shall be obliged to furnish compensation for the damage and loss caused thereby only when their conduct involves fault or negligence. The existence of fault shall be presumed from the time when the person responsible for such acts has been warned by the holder of the "Plant Variety Title" about the existence of the same and required to cease infringing the said Title.

(3) The compensation for damage and loss in favor of the holder of the "Plant Variety Title" shall include not only the amount of the loss and of the profit which would otherwise have been obtained, but also damages for the loss of the goodwill attaching to the plant variety caused by inadequate use made by the infringer.

(4) The relevant general legislation on limitation of actions shall apply to the civil action for compensation of damage and loss.

(5) In addition to compensation for damage and loss, the injured Title holder shall be entitled to:

- (a) the cessation of the act infringing his right;
- (b) the withdrawal from circulation of all the plant material obtained through illegal acts that is in the possession of any of the persons responsible, and its destruction if this is indispensable;
- (c) reversion to himself, as his own property, of the plant material referred to in the last-mentioned Paragraph, in which case allowance for its value shall be made in calculating the compensation for damage and loss. If the value of the above-mentioned plant material exceeds the compensation to be granted, the injured Title holder shall compensate the infringer for the excess;
- (d) the publication of the judgment, at the expense of the losing party, in the “Boletin” referred to in [Section 17](#) of this Law.

## **Section 19**

(1) Any willful infringement of the exclusive right given by the “Plant Variety Title” to its holder shall be punished according to the provisions of [Section 534](#) of the Criminal Code.

(2) Criminal proceedings may only be brought by the injured Title holder or his licensee, or his successors in title.

(3) The relevant general legislation shall apply to criminal proceedings and to the civil action resulting from the crime.

## **Section 20**

(1) Acts carried out that are not in compliance with the provisions of this Law and the rules made thereunder shall be considered administrative offenses and shall be punished according to the following Sections, without prejudice to the competence of the Courts of Justice, as regards the civil or criminal liabilities resulting from these acts.

(2) Administrative offenses shall be categorized according to the nature of the acts concerned; they may be fraudulent, clandestine or against the rules.

(3) The following shall be considered fraudulent:

- (a) acts of assignment of plant material which, while purporting to be protected by a “Plant Variety Title,” do not correspond to the features recorded in the Register of Protected Plant Varieties:
- (b) acts of noncompliance, imputable to any of the interested parties, with the conditions included in the license to use a protected plant variety and affecting the intrinsic qualities of the material and the circumstances upon which the decision to issue the “Plant Variety Title” was based.

(4) Those acts which evade or attempt to evade or make difficult the supervision of the activities governed by this Law and the observance of the rules established under the Law for its successful application and financial viability shall be considered clandestine.

(5) Any other offense shall be considered merely against the rules.

## **Section 21**

The laws and rules on the suppression of fraud in respect of agricultural products or of materials necessary for agriculture shall apply as subsidiary legislation.



## **Section 22**

(1) Fraudulent offenses shall be punished with fines of between 20,000 and 100,000 pesetas; the expenses incurred in the verification of the fraud shall be borne by the offender and, where appropriate, the plant material giving rise to the fine shall be confiscated.

(2) Clandestine offenses shall be punished with fines of between 10,000 and 50,000 pesetas and by the confiscation of the merchandise.

(3) Offenses which are merely against the rules shall be punished with fines of between 1,000 and 25,000 pesetas.

## **Section 23**

The determination, within given limits, of the amounts of the fines established in the last-mentioned Section, shall be fixed in each case according to the importance of the offense, the injury caused, the degree of bad faith on the part of the infringer, his behavior and his previous record and, in general, any circumstances which render him the more or the less responsible.

## **Section 24**

In the case of a second offense, the fines shall be 50 percent higher than those applicable under this Law.

(2) Should the person committing a second offense have committed a clandestine or fraudulent offense, the fines may be raised to three times those applicable, and the suspension of the activity in relation to which the offense arose may be ordered for a period of up to one year.

(3) A person who has, within the preceding five years, been punished for disregarding the provisions of this Law shall be considered a second offender.

(4) The Ministry of Agriculture may decide, if appropriate, on the publication of sanctions imposed in the Official Journal, for exemplary purposes.

## **VIII. FEES**

### **Section 25**

Fees for the Protection of Plant Varieties shall be payable. They shall be subject to the legislation contained in the Law of December 26, 1958, on Fees and Parafiscal Levies, the Consolidated Taxation Law of December 28, 1963, and the additional provisions under those Laws, and shall be governed by the provisions of this Law.

### **Section 26**

For the purposes of the fees established in the aforementioned Section, the plant species or groups thereof which are subject to protection shall be divided into the following groups:

- First group: cereals, oil seeds, lucerne, cotton, sugar and fodder beet, vetch, potato, pea, broad bean and French bean;
- Second group: fruit trees, rose, carnation and strawberry;
- Third group: lettuce, tomato, onion, melon, sainfoin, red clover and white clover;
- Fourth group: the other species not included in the above-mentioned groups.

## Section 27

- (A) The following fees shall be paid for the services listed below, according the types which are also included: [not reproduced here; the tariff of fees is amended occasionally].
- (B) The natural persons or legal entities who receive either from the Public Administration or from the Registry of Protected Plant Varieties any of the services listed in the preceding Subsections, whatever the nature of their request, shall be obliged to pay the fees.
- (C) The fees shall be payable when the appropriate services are requested. When these services are rendered without the need for a prior request, the fees shall be payable at the time of their execution.
- (D) The amount collected in fees shall be paid to the Public Treasury, according to provisions to be established in rules, for its inclusion in the State General Budget.
- (E) The Ministry of Finance shall be the body responsible for all matters appertaining to the fees; it may decide that the computing, notification, and collection of such fees be performed by the Ministry of Agriculture and, within that Ministry, by the National Institute of Seeds and Nursery Plants.

## IX. PROCEDURE AND APPEALS

### Section 28

- (1) The procedure to be followed for the processing of the dossiers governed by this Law shall be that established in the Law on Administrative Procedure of July 17, 1958, which shall also regulate the appeals which interested parties may bring against any act or decision pronounced.
- (2) It shall be a function of the National Institute of Seeds and Nursery Plants to collect all available evidence and information on dossiers likely to involve a decision imposing a fine and to formulate proposals as to how dossiers should be decided, doing so on its own initiative or pursuant to a request from the interested parties or from the competent authorities.
- (3) The decision shall be taken by:
  - (a) the Service for Defense against Frauds and for Agricultural Analyses, when the amount of the fine is not over 25,000 pesetas;
  - (b) the competent Director General, when the amount of the fine is over 25,000 and does not exceed 50,000 pesetas;
  - (c) the Minister for Agriculture, when the amount of the fine is over 50,000 pesetas.
- (4) The limitation period for infringement of this Law shall be five years from when they are committed.

## ADDITIONAL PROVISIONS

- (1) **Article 48** of the Royal Decree-Law of July 26, 1929, on Industrial Property is hereby completed as follows:

“A patent shall not be granted for the following:

7) plant varieties which can benefit from the protection system established by the Law on the Protection of Plant Varieties.”

(2) The amounts of the fines established in absolute quantities in pesetas may be revised by the Government, through the application of coefficients of correction, according to the average price of the objects or products in question.

## **TRANSITIONAL PROVISIONS**

(1) The breeder of a plant variety which is no longer new at the time when protection of a corresponding species is established may, in the following instances and in accordance with this Law, request the protection of his rights:

- (a) if a patent has been granted for a plant variety in Spain or in any other country with which an international agreement on the protection of breeders' rights has been established;
- (b) if a "Plant Variety Title" has been issued in any country or countries with which Spain has established an agreement on the protection of breeders' rights;
- (c) if the plant variety has been registered in a list of commercial varieties officially published in Spain. In this case, the application for the protection of rights for this plant variety shall be submitted within a period of twelve months from the time of entry into force of the Rules mentioned in the first final provision for the general, species of group of species to which this plant variety belongs.

(2) The "Plant Variety Title" for varieties shall be effective as from the date of filing of the application. The period of time elapsed after the filing of an application for a patent, or after the grant of a "Plant Variety Title" or after its registration in the List of Commercial Varieties, shall, where the conditions set forth in [Paragraph \(c\)](#) of the first Transitional Provision have been complied with and where the other cases provided for in the said provision are applicable, be deducted from the period of protection.

(3) Plant varieties that were being marketed before this Law came into force may continue to be freely produced and offered for sale, as long as the breeder does not make use of the right granted to him by the first Transitional Provision.

(4) Until the additional provisions for the application of these Rules to the various species or groups of species enter into force, the system of protection applicable to them shall continue to be that contained in the Law on Industrial Property.

## **FINAL PROVISIONS**

1. This Law shall be applicable to the entire national territory. The Government shall, within a period of one year from the publication of this Law, and on a proposal of the competent Ministries, establish the Rules for implementing this Law; in these Rules the administrative provisions in force on matters concerning this Law shall be included.

2. The provisions necessary for the entry into force of this Law, as regards each genera and species or group of species, which shall be set forth in rules, shall be established by the Ministry of Agriculture.

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