

***In the House of Representatives, U. S.,***

*August 12, 1994.*

*Resolved*, That the bill from the Senate (S. 1406) entitled “An Act to amend the Plant Variety Protection Act to make such Act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, and for other purposes”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; REFERENCES.***

2 (a) *SHORT TITLE.*—*This Act may be cited as the*  
3 *“Plant Variety Protection Act Amendments of 1994”.*

4 (b) *REFERENCES TO PLANT VARIETY PROTECTION*  
5 *ACT.*—*Except as otherwise expressly provided, whenever in*  
6 *this Act an amendment or repeal is expressed in terms of*  
7 *an amendment to, or repeal of, a section or other provision,*  
8 *the reference shall be considered to be made to a section or*  
9 *other provision of the Plant Variety Protection Act (7*  
10 *U.S.C. 2321 et seq.).*

11 ***SEC. 2. DEFINITIONS AND RULES OF CONSTRUCTION.***

12 *Section 41 (7 U.S.C. 2401) is amended to read as fol-*  
13 *lows:*

1 **“§ 41. Definitions and rules of construction**

2 “(a) *DEFINITIONS.*—As used in this Act:

3 “(1) *BASIC SEED.*—The term ‘basic seed’ means  
4 the seed planted to produce certified or commercial  
5 seed.

6 “(2) *BREEDER.*—The term ‘breeder’ means the  
7 person who directs the final breeding creating a vari-  
8 ety or who discovers and develops a variety. If the ac-  
9 tions are conducted by an agent on behalf of a prin-  
10 cipal, the principal, rather than the agent, shall be  
11 considered the breeder. The term does not include a  
12 person who redevelops or rediscovers a variety the ex-  
13 istence of which is publicly known or a matter of  
14 common knowledge.

15 “(3) *ESSENTIALLY DERIVED VARIETY.*—

16 “(A) *IN GENERAL.*—The term ‘essentially  
17 derived variety’ means a variety that—

18 “(i) is predominantly derived from an-  
19 other variety (referred to in this paragraph  
20 as the ‘initial variety’) or from a variety  
21 that is predominantly derived from the ini-  
22 tial variety, while retaining the expression  
23 of the essential characteristics that result  
24 from the genotype or combination of  
25 genotypes of the initial variety;

1                   “(ii) is clearly distinguishable from the  
2                   initial variety; and

3                   “(iii) except for differences that result  
4                   from the act of derivation, conforms to the  
5                   initial variety in the expression of the es-  
6                   sential characteristics that result from the  
7                   genotype or combination of genotypes of the  
8                   initial variety.

9                   “(B) METHODS.—An essentially derived va-  
10                  riety may be obtained by the selection of a natu-  
11                  ral or induced mutant or of a somaclonal vari-  
12                  ant, the selection of a variant individual from  
13                  plants of the initial variety, backcrossing, trans-  
14                  formation by genetic engineering, or other meth-  
15                  od.

16                  “(4) KIND.—The term ‘kind’ means one or more  
17                  related species or subspecies singly or collectively  
18                  known by one common name, such as soybean, flax,  
19                  or radish.

20                  “(5) SEED.—The term ‘seed’, with respect to a  
21                  tuber propagated variety, means the tuber or the part  
22                  of the tuber used for propagation.

23                  “(6) SEXUALLY REPRODUCED.—The term ‘sexu-  
24                  ally reproduced’ includes any production of a variety

1 *by seed, but does not include the production of a vari-*  
2 *ety by tuber propagation.*

3 “(7) *TUBER PROPAGATED.*—The term ‘tuber  
4 *propagated’* means propagated by a tuber or a part  
5 *of a tuber.*

6 “(8) *UNITED STATES.*—The terms ‘United  
7 *States’* and ‘*this country*’ mean the United States, the  
8 *territories and possessions of the the United States,*  
9 *and the Commonwealth of Puerto Rico.*

10 “(9) *VARIETY.*—The term ‘variety’ means a  
11 *plant grouping within a single botanical taxon of the*  
12 *lowest known rank, that, without regard to whether*  
13 *the conditions for plant variety protection are fully*  
14 *met, can be defined by the expression of the character-*  
15 *istics resulting from a given genotype or combination*  
16 *of genotypes, distinguished from any other plant*  
17 *grouping by the expression of at least one characteris-*  
18 *tic and considered as a unit with regard to the suit-*  
19 *ability of the plant grouping for being propagated un-*  
20 *changed. A variety may be represented by seed, trans-*  
21 *plants, plants, tubers, tissue culture plantlets, and*  
22 *other matter.*

23 “(b) *RULES OF CONSTRUCTION.*—For the purposes of  
24 *this Act:*

1           “(1) SALE OR DISPOSITION FOR  
2           NONREPRODUCTIVE PURPOSES.—The sale or disposi-  
3           tion, for other than reproductive purposes, of har-  
4           vested material produced as a result of experimen-  
5           tation or testing of a variety to ascertain the charac-  
6           teristics of the variety, or as a by-product of increas-  
7           ing a variety, shall not be considered to be a sale or  
8           disposition for purposes of exploitation of the variety.

9           “(2) SALE OR DISPOSITION FOR REPRODUCTIVE  
10          PURPOSES.—The sale or disposition of a variety for  
11          reproductive purposes shall not be considered to be a  
12          sale or disposition for the purposes of exploitation of  
13          the variety if the sale or disposition is done as an in-  
14          tegral part of a program of experimentation or test-  
15          ing to ascertain the characteristics of the variety, or  
16          to increase the variety on behalf of the breeder or the  
17          successor in interest of the breeder.

18          “(3) SALE OR DISPOSITION OF HYBRID SEED.—  
19          The sale or disposition of hybrid seed shall be consid-  
20          ered to be a sale or disposition of harvested material  
21          of the varieties from which the seed was produced.

22          “(4) APPLICATION FOR PROTECTION OR ENTER-  
23          ING INTO A REGISTER OF VARIETIES.—The filing of  
24          an application for the protection or for the entering  
25          of a variety in an official register of varieties, in any

1       country, shall be considered to render the variety a  
2       matter of common knowledge from the date of the ap-  
3       plication, if the application leads to the granting of  
4       protection or to the entering of the variety in the offi-  
5       cial register of varieties, as the case may be.

6               “(5) *DISTINCTNESS.*—The distinctness of one va-  
7       riety from another may be based on one or more iden-  
8       tifiable morphological, physiological, or other charac-  
9       teristics (including any characteristics evidenced by  
10      processing or product characteristics, such as milling  
11      and baking characteristics in the case of wheat) with  
12      respect to which a difference in genealogy may con-  
13      tribute evidence.

14              “(6) *PUBLICLY KNOWN VARIETIES.*—

15                      “(A) *IN GENERAL.*—A variety that is ade-  
16      quately described by a publication reasonably  
17      considered to be a part of the public technical  
18      knowledge in the United States shall be consid-  
19      ered to be publicly known and a matter of com-  
20      mon knowledge.

21                      “(B) *DESCRIPTION.*—A description that  
22      meets the requirements of subparagraph (A) shall  
23      include a disclosure of the principal characteris-  
24      tics by which a variety is distinguished.

1                   “(C) *OTHER MEANS.*—A variety may be-  
2                   come publicly known and a matter of common  
3                   knowledge by other means.”.

4   **SEC. 3. RIGHT TO PLANT VARIETY PROTECTION; PLANT VA-**  
5                   **RIETIES PROTECTABLE.**

6                   Section 42 (7 U.S.C. 2402) is amended to read as fol-  
7                   lows:

8   **“§ 42. Right to plant variety protection; plant varieties**  
9                   **protectable**

10                  “(a) *IN GENERAL.*—The breeder of any sexually repro-  
11                  duced or tuber propagated plant variety (other than fungi  
12                  or bacteria) who has so reproduced the variety, or the suc-  
13                  cessor in interest of the breeder, shall be entitled to plant  
14                  variety protection for the variety, subject to the conditions  
15                  and requirements of this Act, if the variety is—

16                         “(1) new, in the sense that, on the date of filing  
17                         of the application for plant variety protection, propa-  
18                         gating or harvested material of the variety has not  
19                         been sold or otherwise disposed of to other persons, by  
20                         or with the consent of the breeder, or the successor in  
21                         interest of the breeder, for purposes of exploitation of  
22                         the variety—

23                                 “(A) in the United States, more than 1 year  
24                                 prior to the date of filing; or

1           “(B) *in any area outside of the United*  
2           *States—*

3                   “(i) *more than 4 years prior to the*  
4                   *date of filing; or*

5                   “(ii) *in the case of a tree or vine, more*  
6                   *than 6 years prior to the date of filing;*

7           “(2) *distinct, in the sense that the variety is*  
8           *clearly distinguishable from any other variety the ex-*  
9           *istence of which is publicly known or a matter of*  
10           *common knowledge at the time of the filing of the ap-*  
11           *plication;*

12           “(3) *uniform, in the sense that any variations*  
13           *are describable, predictable, and commercially accept-*  
14           *able; and*

15           “(4) *stable, in the sense that the variety, when*  
16           *reproduced, will remain unchanged with regard to the*  
17           *essential and distinctive characteristics of the variety*  
18           *with a reasonable degree of reliability commensurate*  
19           *with that of varieties of the same category in which*  
20           *the same breeding method is employed.*

21           “(b) *MULTIPLE APPLICANTS.—*

22                   “(1) *IN GENERAL.—If 2 or more applicants sub-*  
23                   *mit applications on the same effective filing date for*  
24                   *varieties that cannot be clearly distinguished from*  
25                   *one another, but that fulfill all other requirements of*

1        *subsection (a), the applicant who first complies with*  
2        *all requirements of this Act shall be entitled to a cer-*  
3        *tificate of plant variety protection, to the exclusion of*  
4        *any other applicant.*

5            *“(2) REQUIREMENTS COMPLETED ON SAME*  
6        *DATE.—*

7            *“(A) IN GENERAL.—Except as provided in*  
8        *subparagraph (B), if 2 or more applicants com-*  
9        *ply with all requirements for protection on the*  
10       *same date, a certificate shall be issued for each*  
11       *variety.*

12           *“(B) VARIETIES INDISTINGUISHABLE.—If*  
13       *the varieties that are the subject of the applica-*  
14       *tions cannot be distinguished in any manner, a*  
15       *single certificate shall be issued jointly to the ap-*  
16       *plicants.”.*

17       **SEC. 4. APPLICATIONS.**

18       *Section 52 (7 U.S.C. 2422) is amended—*

19           *(1) in paragraph (1), by adding at the end the*  
20       *following new sentence: “The variety shall be named*  
21       *in accordance with regulations issued by the Sec-*  
22       *retary.”;*

23           *(2) in the first sentence of paragraph (2), by*  
24       *striking “novelty” and inserting “distinctiveness, uni-*  
25       *formity, and stability”;*

1           (3) by redesignating paragraphs (3) and (4) as  
2 paragraphs (4) and (5), respectively;

3           (4) by inserting after paragraph (2) the follow-  
4 ing new paragraph:

5           “(3) A statement of the basis of the claim of the  
6 applicant that the variety is new.”; and

7           (5) in paragraph (4) (as redesignated by para-  
8 graph (3)), by inserting “(including any propagating  
9 material)” after “basic seed”.

10 **SEC. 5. BENEFIT OF EARLIER FILING DATE.**

11 Section 55(a) (7 U.S.C. 2425(a)) is amended—

12           (1) by redesignating the first and second sen-  
13 tences as paragraphs (1) and (2), respectively;

14           (2) in paragraph (1) (as so designated), by in-  
15 serring before the period at the end the following: “,  
16 not including the date on which the application is  
17 filed in the foreign country”; and

18           (3) by adding at the end the following new para-  
19 graph:

20           “(3)(A) An applicant entitled to a right of prior-  
21 ity under this subsection shall be allowed to furnish  
22 any necessary information, document, or material re-  
23 quired for the purpose of the examination of the ap-  
24 plication during—



1           (B) by striking paragraphs (2) and (3) (as  
2 so designated) and inserting the following new  
3 paragraphs:

4           “(2) If the owner so elects, the certificate shall—

5                 “(A) specify that seed of the variety shall be  
6 sold in the United States only as a class of cer-  
7 tified seed; and

8                 “(B) if so specified, conform to the number  
9 of generations designated by the owner.

10           “(3) An owner may waive a right provided  
11 under this subsection, other than a right that is elect-  
12 ed by the owner under paragraph (2)(A).”;

13           (2) in the first sentence of subsection (b)—

14                 (A) by striking “eighteen” and inserting  
15 “20”; and

16                 (B) by inserting before the period at the end  
17 the following: “, except that, in the case of a tree  
18 or vine, the term of the plant variety protection  
19 shall expire 25 years from the date of issue of the  
20 certificate”; and

21           (3) in subsection (c), by striking “repository:  
22 Provided, however, That” and inserting “repository,  
23 or requiring the submission of a different name for  
24 the variety, except that”.

1 **SEC. 8. PRIORITY CONTEST.**

2 (a) *PRIORITY CONTEST; EFFECT OF ADVERSE FINAL*  
3 *JUDGMENT OR INACTION.*—Sections 92 and 93 (7 U.S.C.  
4 2502 and 2503) are repealed.

5 (b) *INTERFERING PLANT VARIETY PROTECTION.*—

6 (1) *REDESIGNATION.*—Section 94 of the Act (7  
7 U.S.C. 2504) is redesignated a section 92.

8 (2) *AMENDMENTS.*—Section 92 (as so redesignig-  
9 nated) is amended—

10 (A) by striking “The owner” and inserting

11 “(a) The owner”; and

12 (B) by striking the second sentence.

13 (c) *APPEAL OR CIVIL ACTION IN CONTESTED CASES.*—

14 (1) *TRANSFER.*—Section 73 (7 U.S.C. 2463) is  
15 amended by transferring subsection (b) to the end of  
16 section 92 (as redesignated by subsection (b)(1)).

17 (2) *REPEAL.*—Section 73 (as amended by para-  
18 graph (1)) is repealed.

19 (d) *CONFORMING AMENDMENTS.*—

20 (1) Section 71 (7 U.S.C. 2461) is amended by  
21 striking “92,”.

22 (2) Section 102 (7 U.S.C. 2532) is amended by  
23 inserting “or tuber propagable” after “sexually repro-  
24 ducible” each place it appears.

25 **SEC. 9. INFRINGEMENT OF PLANT VARIETY PROTECTION.**

26 Section 111 (7 U.S.C. 2541) is amended—

1           (1) in subsection (a)—

2                   (A) by striking “novel” the first two places  
3 it appears and inserting “protected”;

4                   (B) in paragraph (1), by striking “the  
5 novel” and inserting “or market the protected”;

6                   (C) by striking “novel” each place it ap-  
7 pears in paragraphs (2) through (7);

8                   (D) in paragraph (3), by inserting “, or  
9 propagate by a tuber or a part of a tuber,” after  
10 “sexually multiply”;

11                   (E) by striking “or” each place it appears  
12 at the end of paragraphs (3) through (6);

13                   (F) by redesignating paragraphs (7) and  
14 (8) as paragraphs (9) and (10), respectively; and

15                   (G) by inserting after paragraph (6) the fol-  
16 lowing new paragraphs:

17                   “(7) condition the variety for the purpose of  
18 propagation, except to the extent that the conditioning  
19 is related to the activities permitted under section  
20 113;

21                   “(8) stock the variety for any of the purposes re-  
22 ferred to in paragraphs (1) through (7);”;

23                   (2) by redesignating subsection (b) as subsection  
24 (f); and

1           (3) *by inserting after subsection (a) the following*  
2           *new subsections:*

3           “(b)(1) *Subject to paragraph (2), the owner of a pro-*  
4           *ected variety may authorize the use of the variety under*  
5           *this section subject to conditions and limitations specified*  
6           *by the owner.*

7           “(2) *In the case of a contract between a seed producer*  
8           *and the owner of a protected variety of lawn, turf, or forage*  
9           *grass seed, or alfalfa or clover seed for the production of*  
10          *seed of the protected variety, the producer shall be deemed*  
11          *to be authorized by the owner to sell such seed and to use*  
12          *the variety if—*

13                  “(A) *the producer has fulfilled the terms of the*  
14                  *contract;*

15                  “(B) *the owner refuses to take delivery of the seed*  
16                  *or refuses to pay any amounts due under the contract*  
17                  *within 30 days of the payment date specified in the*  
18                  *contract; and*

19                  “(C) *after the expiration of the period specified*  
20                  *in subparagraph (B), the producer notifies the owner*  
21                  *of the producer’s intent to sell the seed and unless the*  
22                  *owner fails to pay the amounts due under the con-*  
23                  *tract and take delivery of the seed within 30 days of*  
24                  *such notification. For the purposes of this paragraph,*

1       *the term ‘owner’ shall include any licensee of the*  
2       *owner.*

3       “(3) Paragraph (2) shall apply to contracts entered  
4       into with respect to plant varieties protected under this Act  
5       (7 U.S.C. 2321 et seq.) as in effect on the day before the  
6       effective date of this provision as well as plant varieties pro-  
7       tected under this Act as amended by the Plant Variety Pro-  
8       tection Act Amendments of 1994.

9       “(4) Nothing in this subsection shall affect any other  
10       rights or remedies of producers or owners that may exist  
11       under other Federal or State laws.

12       “(c) This section shall apply equally to—

13               “(1) any variety that is essentially derived from  
14               a protected variety, unless the protected variety is an  
15               essentially derived variety;

16               “(2) any variety that is not clearly distinguish-  
17               able from a protected variety;

18               “(3) any variety whose production requires the  
19               repeated use of a protected variety; and

20               “(4) harvested material (including entire plants  
21               and parts of plants) obtained through the unauthor-  
22               ized use of propagating material of a protected vari-  
23               ety, unless the owner of the variety has had a reason-  
24               able opportunity to exercise the rights provided under  
25               this Act with respect to the propagating material.

1       “(d) It shall not be an infringement of the rights of  
2 the owner of a variety to perform any act concerning propa-  
3 gating material of any kind, or harvested material, includ-  
4 ing entire plants and parts of plants, of a protected variety  
5 that is sold or otherwise marketed with the consent of the  
6 owner in the United States, unless the act involves further  
7 propagation of the variety or involves an export of material  
8 of the variety, that enables the propagation of the variety,  
9 into a country that does not protect varieties of the plant  
10 genus or species to which the variety belongs, unless the ex-  
11 ported material is for final consumption purposes.

12       “(e) It shall not be an infringement of the rights of  
13 the owner of a variety to perform any act done privately  
14 and for noncommercial purposes.”.

15 **SEC. 10. RIGHT TO SAVE SEED; CROP EXEMPTION.**

16       The first sentence of section 113 (7 U.S.C. 2543) is  
17 amended by striking “section: Provided, That” and all that  
18 follows through the period and inserting “section.”.

19 **SEC. 11. LIMITATION OF DAMAGES; MARKING AND NOTICE.**

20       Section 127 (7 U.S.C. 2567) is amended by striking  
21 “novel” each place it appears.

22 **SEC. 12. OBLIGATION TO USE VARIETY NAME.**

23       Section 128(a) (7 U.S.C. 2568(a)) is amended—

24             (1) by inserting “or tubers or parts of tubers”  
25             after “plant material”; and

1           (2) *by adding at the end the following new para-*  
2 *graph:*

3           “(4) *Failure to use the name of a variety for*  
4 *which a certificate of protection has been issued under*  
5 *this Act, even after the expiration of the certificate,*  
6 *except that lawn, turf, or forage grass seed, or alfalfa*  
7 *or clover seed may be sold without a variety name*  
8 *unless use of the name of a variety for which a certifi-*  
9 *cate of protection has been issued under this Act is re-*  
10 *quired under State law.”.*

11 **SEC. 13. ELIMINATION OF GENDER-BASED REFERENCES.**

12           (a) *The last sentence of section 7(a) (7 U.S.C. 2327(a))*  
13 *is amended by striking “his designee shall act as chairman”*  
14 *and inserting “the designee of the Secretary shall act as*  
15 *chairperson”.*

16           (b) *Section 10(a) (7 U.S.C. 2330(a)) is amended by*  
17 *striking “he” and inserting “the Secretary”.*

18           (c) *Section 23 (7 U.S.C. 2353) is amended—*

19                 (1) *in the second sentence, by striking “he” and*  
20 *inserting “the officer”; and*

21                 (2) *in the third sentence, by striking “he” and*  
22 *inserting “the person”.*

23           (d) *Section 24 (7 U.S.C. 2354) is amended—*

24                 (1) *in the first sentence of subsection (a), by*  
25 *striking “him” and inserting “the witness”; and*

1           (2) *in the second sentence of subsection (c)—*

2                   (A) *by striking “this fees and traveling ex-*  
3                   *penses” and inserting “the fees and traveling ex-*  
4                   *penses of the witness”; and*

5                   (B) *by striking “him” and inserting “the*  
6                   *witness”.*

7           (e) *The last sentence of section 27 (7 U.S.C. 2357) is*  
8           *amended by striking “he” each place it appears and insert-*  
9           *ing “the person”.*

10          (f) *The first sentence of section 44 (7 U.S.C. 2404) is*  
11          *amended by striking “he” and inserting “the Secretary”.*

12          (g) *Section 53 (7 U.S.C. 2423) is amended—*

13                   (1) *in subsection (a), by striking “one (or his*  
14                   *successor)” and inserting “one person (or the succes-*  
15                   *sor of the person)”;* and

16                   (2) *in subsection (b), by striking “he” and in-*  
17                   *serting “the Secretary”.*

18          (h) *Section 54 (7 U.S.C. 2424) is amended by striking*  
19          *“his successor in interest” and inserting “the successor in*  
20          *interest of the breeder”.*

21          (i) *Section 55 (7 U.S.C. 2425) is amended—*

22                   (1) *in subsection (a)(2) (as redesignated by sec-*  
23                   *tion 5(1)), by striking “his application” and insert-*  
24                   *ing “the application filed in the United States”; and*

1           (2) in subsection (b), by striking “his predecessor  
2           in title” and inserting “the predecessor in title of the  
3           person”.

4           (j) The first sentence of section 62(b) (7 U.S.C.  
5           2442(b)) is amended—

6           (1) by striking “him” and inserting “an appli-  
7           cant”;

8           (2) by striking “an applicant shall” and insert-  
9           ing “the applicant shall”; and

10          (3) by striking “he” and inserting “the Sec-  
11          retary”.

12          (k) The second sentence of section 72 (7 U.S.C. 2462)  
13          is amended by striking “his variety as specified in his ap-  
14          plication” and inserting “the variety as specified in the ap-  
15          plication”.

16          (l) Section 82 (7 U.S.C. 2482) is amended by striking  
17          “his signature” and inserting “the signature of the Sec-  
18          retary”.

19          (m) Section 83 (7 U.S.C. 2483) is amended—

20          (1) in subsection (a) (as amended by section  
21          7(1)(A))—

22                  (A) in paragraph (1), by striking “(or his  
23                  successor in interest) his heirs and assignees”  
24                  and inserting “(or the successor in interest of the  
25                  breeder)”; and

1           (B) in paragraph (4), by striking “his dis-  
2           cretion” and inserting “the discretion of the Sec-  
3           retary”; and

4           (2) in subsection (c), by striking “he” and in-  
5           serting “the last owner”.

6           (n) Section 86 (7 U.S.C. 2486) is amended—

7           (1) in the first sentence, by striking “him” and  
8           inserting “the Secretary”; and

9           (2) in the third sentence, by striking “he” and  
10          inserting “the person”.

11          (o) Section 91(c) (7 U.S.C. 2501(c)) is amended by  
12          striking “he” and inserting “the Secretary”.

13          (p) The fourth sentence of section 92(b) (as transferred  
14          by section 8(c)(1)) is amended by striking “he” and insert-  
15          ing “the Secretary”.

16          (q) The first sentence of section 111(f) (as redesignated  
17          by section 9(2)) is amended by striking “his official capac-  
18          ity” and inserting “the official capacity of the officer or  
19          employee”.

20          (r) Section 112 (7 U.S.C. 2542) is amended by striking  
21          “his successor in interest” and inserting “the successor in  
22          interest of the person”.

23          (s) Section 113 (7 U.S.C. 2543) is amended—

24          (1) in the first sentence—

1           (A) by striking “him” and inserting “the  
2           person”; and

3           (B) by striking “his farm” and inserting  
4           “the farm of the person”; and

5           (2) in the third sentence, by striking “his ac-  
6           tions” and inserting “the actions of the purchaser”.

7           (t) Section 121 (7 U.S.C. 2561) is amended by striking  
8           “his”.

9           (u) Section 126(b) (7 U.S.C. 2566(b)) is amended by  
10          striking “his” and inserting “the”.

11          (v) Section 128(a) (7 U.S.C. 2568(a)) is amended by  
12          striking “he” and inserting “the Secretary”.

13          (w) Section 130(a) (7 U.S.C. 2570(a)) is amended by  
14          striking “his official capacity” and inserting “the official  
15          capacity of the officer or employee”.

16          **SEC. 14. TRANSITIONAL PROVISIONS.**

17          (a) *IN GENERAL.*—Except as provided in this section,  
18          any variety for which a certificate of plant variety protec-  
19          tion has been issued prior to the effective date of this Act,  
20          and any variety for which an application is pending on  
21          the effective date of this Act, shall continue to be governed  
22          by the Plant Variety Protection Act (7 U.S.C. 2321 et seq.),  
23          as in effect on the day before the effective date of this Act.

24          (b) *APPLICATIONS REFILED.*—

1           (1) *IN GENERAL.*—An applicant may refile a  
2 pending application on or after the effective date of  
3 this Act.

4           (2) *EFFECT OF REFILING.*—If a pending appli-  
5 cation is refiled on or after the effective date of this  
6 Act—

7                   (A) eligibility for protection and the terms  
8 of protection shall be governed by the Plant Vari-  
9 ety Protection Act, as amended by this Act; and

10                   (B) for purposes of section 42 of the Plant  
11 Variety Protection Act, as amended by section 3  
12 of this Act, the date of filing shall be the date of  
13 filing of the original application.

14           (c) *LABELING.*—

15           (1) *IN GENERAL.*—To obtain the protection pro-  
16 vided to an owner of a protected variety under the  
17 Plant Variety Protection Act (7 U.S.C. 2321 et seq.)  
18 (as amended by this Act), a notice given by an owner  
19 concerning the variety under section 127 of the Plant  
20 Variety Protection Act (7 U.S.C. 2567) shall state  
21 that the variety is protected under such Act (as  
22 amended by this Act).

23           (2) *SANCTIONS.*—Any person that makes a false  
24 or misleading statement or claim, or uses a false or  
25 misleading label, concerning protection described in

1        *paragraph (1) shall be subject to the sanctions de-*  
2        *scribed in section 128 of the Plant Variety Protection*  
3        *Act (7 U.S.C. 2568).*

4        **SEC. 15. EFFECTIVE DATE.**

5        *This Act and the amendments made by this Act shall*  
6        *become effective 180 days after the date of enactment of this*  
7        *Act.*

Attest:

*Clerk.*



103<sup>RD</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1406**

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**AMENDMENT**