

CHILE

LAW No. 19.342

ON THE RIGHTS OF BREEDERS OF NEW VARIETIES OF PLANTS

TITLE I

General Provisions

Article 1

The breeder of a new plant variety shall enjoy protection of the right over the variety accorded to him and regulated by this Law.

Article 2

For the purposes of this Law:

(a) “Breeder” means the person, whether natural person or legal entity, who by natural means or genetic manipulation has discovered and thus bred a new variety of plant;

(b) “Plant variety” means a plant grouping within a single botanical taxon, whatever may be the distinctive element, of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

(c) “Propagating material” means seed, fruit, plants or parts thereof intended for the reproduction of plants;

(d) “Reference specimen” means the smallest entity used by the breeder to maintain his variety, from which the representative sample for the registration of the variety is taken;

(e) “Department” means the Seeds Department of the Agriculture and Livestock Service;

- (f) “Register” means the Register of Protected Varieties;
- (g) “Protected varieties” means those entered in the Register of Protected Varieties.

Article 3

The right of the breeder of a new plant variety provides that the following shall be subject to his exclusive authorization:

- (a) production of propagating material of the variety;
- (b) sale, offering for sale or display for sale of the said material;
- (c) marketing, import or export thereof;
- (d) repeated use of the new variety for the commercial production of another variety;
- (e) use of ornamental plants or of parts of such plants that are normally marketed for purposes other than propagation, with a view to the production of ornamental plants or cut flowers.

The right of the breeder may be exercised in relation to all botanical genera and species, and shall apply in general to the complete plant, including all types of flower, fruit or seed and any part thereof that may be used as propagating material.

The breeder’s right shall not be deemed violated by any use made by a farmer, on his own farm, of the harvest from properly acquired reproductive material. On no account, however, may such material be advertised or transferred by any legal title as seed.

Article 4

The right of the breeder shall be established by the recording in the Register of Protected Varieties of an extract from the decision of the Certifying Committee ordering the recording and the grant of the corresponding title, which shall contain an objective description of the variety with reference to technical records.

Article 5

The breeder’s right in a variety shall not prevent another person from making use of it to create a new variety without having to seek the authorization of the breeder of the original variety that served as the means for breeding the new one.

The authorization of the breeder of the original variety shall nevertheless be required where that variety has to be used continually for the production of the new variety.

If the legal requirements are met, the new variety shall be recognized in the name of the breeder thereof.

Article 6

The breeder's right shall be marketable, transferable and inheritable, and the heir or assignee may use this right, derive benefit from it and dispose of it during the period that remained to his predecessor, in the same manner and under the same conditions as the said predecessor.

The owner of the right may grant such licenses as he considers appropriate for the use of the protected variety by third parties.

Any act or contract imposing limitations on the licensee that do not derive from the right of the breeder is prohibited, and any contrary clause shall be null and void.

Article 7

Where a breeder is in a situation of monopolistic abuse in the exploitation or marketing of the protected variety, according to the judgment of the Settlement Commission established by Decree-Law No. 211 of 1973, the revised and systematized text of which was confirmed by Supreme Decree No. 511 of 1980 of the Ministry of Economic Affairs, Development and Reconstruction, the said Commission shall direct the Seeds Department to grant non-voluntary licenses.

The ruling that punishes the abuse shall likewise specify the amount and manner of payment of the compensation that the licensee must pay to the owner of the right.

Article 8

The right provided by this Law shall be granted to breeders of new plant varieties that are distinct, homogeneous and stable. The applicant shall in addition comply with the requirement of Article 20 and with the formalities laid down in this Law for the grant of the right.

Article 9

The variety shall be considered new where it has not been marketed in the country or where it has been so marketed but without the consent of the breeder. The variety shall likewise be considered new where it has been marketed in the country with the breeder's consent but for no more than one year. The variety shall further be considered new where it has been marketed abroad with the breeder's consent, but for no more than six years in the case of forest trees, fruit trees, ornamental trees and vines and four years in the case of other species.

Article 10

A variety shall be distinct if it is distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time of the application for protection. The filing in any country of an application for the grant of a breeder's right in a variety, or for the entry thereof in an official register of varieties, shall be deemed to make the said variety a matter of common knowledge as of the application date where the application leads to the grant of a breeder's right or to the entry of the variety in the official register of varieties, as the case may be.

The variety shall be considered homogeneous if it is sufficiently uniform in its relevant characteristics, subject to the foreseeable variation that may be expected from the particular features of its sexual reproduction or vegetative propagation.

The variety shall be stable if its essential characteristics remain unchanged after successive reproductions or propagations, or, where the breeder has specified a particular reproduction or propagation cycle, at the end of each such cycle.

Article 11

The term of protection, counted from the date of registration of the breeder's right, shall be 18 years for trees and vines and 15 years for other species.

The right of the breeder shall nevertheless remain in force only as long as he pays the fees and other charges for the registration and maintenance of his right at the intervals specified in the Regulations.

Varieties shall be considered public property where their periods of protection have expired or where the right in them has lapsed.

TITLE II

Seeds Department of the Agriculture and Livestock Service

Article 12

In addition to the responsibilities assigned to it by Decree-Law No. 1.764 of 1977 and the Regulations thereunder, the Agriculture and Livestock Service shall, through the Seeds Department, discharge the following functions and responsibilities:

(a) carrying out all tests, trials and other work ordered by the Certifying Committee with a view to establishing that the variety in respect of which the application is filed complies with the requirements imposed by this Law;

- (b) keeping the Register of Protected Varieties and making such entries, sub-entries and annotations in it as may be ordered by the Certifying Committee;
- (c) granting the final or provisional variety title, subject to a favorable report from the Certifying Committee;
- (d) ensuring that protected varieties continue to show the characteristics specified in Articles 9 and 10;
- (e) issuing such reports and certificates as may be requested of it on matters within its competence;

Article 13

The Department shall be under the responsibility of a Director, who shall be a professional specialized in genetics, botany or agronomy and shall be appointed by the Minister for Agriculture.

Article 14

The present Register of Variety or Cultivar Ownership shall become the Register of Protected Varieties.

Article 15

A Variety Certifying Committee shall be responsible for the process of verifying compliance with the requirements imposed by this Law for the recognition of a breeder's right in a variety.

Article 16

The Certifying Committee referred to in the foregoing Article shall be composed of the Director of the Department or his deputy, who shall preside, and six members appointed by the Minister of Agriculture, who shall likewise be professionals specialized in genetics, botany or agronomy working in the public, private or academic sectors.

Article 17

The members of the Committee referred to in the foregoing Article shall remain in office for six years, and may be reappointed at the end of that period. Should any member be prevented from discharging his functions, the Minister for Agriculture shall appoint a replacement in accordance with the foregoing Article.

Article 18

The Variety Certifying Committee shall be responsible for:

- (a) deliberating and pronouncing on applications for the recognition of a breeder's right, for which purpose it may order that such inspections, tests, trials and other action be conducted as may be appropriate;
- (b) recognizing, where appropriate, the right of the breeder in a new variety in either provisional or final form; ordering the recording thereof in the Register of Protected Varieties and the grant of the corresponding title;
- (c) recognizing the right of priority referred to in Article 22;
- (d) declaring the lapse of the breeder's right and ordering the cancellation of entries in the Register of Protected Varieties and of the corresponding titles where appropriate;
- (e) carrying out such other functions and duties as are entrusted to it by laws and regulations.

Article 19

The Variety Certifying Committee shall adopt its decisions by majority vote and, in the event of equally divided votes, the president shall have a casting vote.

TITLE III

Recognition of the Breeder's Right

Article 20

To secure the recognition of his right, the breeder shall complete the following formalities:

- (a) He shall file a written application with the Director of the Department in the form specified by the Regulations;
- (b) He shall enclose with his application such supporting material and documents as will prove that the variety to be registered complies with the requirements laid down by this Law and also attest the origin of the variety, together with a description of the botanical, morphological and physiological characteristics that enable it to be differentiated from any other well-known variety, with an express mention of any varieties that are similar;
- (c) He shall submit to the Department a representative sample of the variety for which registration is sought, in such quantities as are specified by the Certifying Committee;

(d) He shall undertake to maintain the corresponding reference specimens throughout the period of validity of the registration, and specify the testing station or other place in which they are kept;

(e) He shall pay the fees and other costs for registration, and also those incurred for the annual maintenance of each variety on the Register.

Article 21

The breeder shall propose a name for the variety, which shall be the generic designation thereof. It shall in particular be different from any denomination which designates a pre-existing variety of the same or a similar botanical species.

The name shall be sufficiently distinctive, and may not consist solely of figures; it shall serve to avoid confusion with the names of other varieties already known, and must not mislead as to the characteristics of the variety or the identity of the breeder.

The name of a variety may not be registered as a trademark.

Article 22

When the protection of a variety has been previously applied for abroad, the breeder thereof shall have priority, for a period of one year following the filing date in the country of origin, for the filing of his application for protection in Chile. In the said application, the breeder shall elect domicile in Chile or appoint an authorized representative in the country for the purpose.

Where the new variety has already been protected abroad, the breeder thereof shall enclose a copy of the title or patent granted to him, duly authenticated and translated to the satisfaction of the Variety Certifying Committee.

Where the requirements imposed in the country of origin for the recognition of the breeder's right in the variety, and also the prior analyses, tests and certifications to which the variety is subjected in order to establish its compliance therewith, are similar or superior to those laid down in this Law and the Regulations under it, the Certifying Committee may direct that a provisional title be granted on the terms specified in Article 33 of this Law, subject to verification of the facts.

Article 23

On the filing of an application for the grant of a breeder's right, the Director of the Department shall receive it and number it accordingly. He shall in addition examine and check all the background material filed with it, and any such material subsequently submitted by the person concerned.

Every application shall be transmitted to the Certifying Committee with a technical report which shall recommend either its rejection or its acceptance. In the latter case such inspections, tests and trials as are appropriate shall be proposed.

Article 24

On the acceptance for processing of an application, it shall be mandatory to publish an extract therefrom in the Diario Oficial in the manner specified in the Regulations, and there shall be a period of 60 days following the said publication for the filing of any opposition.

Article 25

Where opposition to an application for registration is filed, the Director of the Department shall communicate the opposition to the applicant for a period of 60 days so that the latter may assert his right.

Article 26

Should there be substantive, relevant facts in dispute, evidence in the case may be submitted for a period of 60 days, which period may be extended for a maximum of 60 days where one of the parties is domiciled abroad.

Article 27

The parties may make use of all forms of evidence permitted by the law. The provisions of the second paragraph of Article 64 of the Code of Civil Procedure shall also be applicable.

Article 28

Notice shall be given in the manner specified in the Regulations.

Article 29

When the period for the submission of evidence expires, the Director of the Department shall report to the Certifying Committee, which shall issue a final ruling.

Article 30

Where two or more applications are filed for the same variety, preference shall be given to the one with the strongest claim. In cases where it cannot be accurately determined which claim is strongest or where they are equally strong, preference shall be given to the earliest application.

Article 31

Where no opposition has been filed or where opposition has been settled in favor of the applicant, the Certifying Committee shall order the carrying out of such inspections, tests and trials as may be appropriate.

Article 32

Where the Certifying Committee decides that the variety filed for protection complies with the requirements specified in this Law, it shall order the Department to enter the variety in the Register of Protected Varieties and grant the corresponding title, subject to payment of the fee charged therefor.

Article 33

Without prejudice to the provisions of the foregoing Article, the Certifying Committee may order the provisional recording of a variety in the Register of Protected Varieties and the grant of the corresponding title even where the person concerned may not have submitted all the required background material or while the examination and analysis thereof is still proceeding. The provisional registration shall be subject to the time limit, procedure and other conditions set by the Certifying Committee.

The provisional title shall afford the applicant the rights specified in Article 3 of this Law throughout the period for which it has been granted. Where the owner of a provisional right is subsequently granted final protection, the duration of such final protection shall be calculated as from the date of the provisional registration.

Article 34

The entry in the Register of Protected Varieties concerning the variety and the corresponding title shall record the following particulars at least:

- (a) name of the variety;
- (b) name and address of the breeder and his representative, if any;
- (c) decision of the Certifying Committee recognizing the right and ordering the registration of the variety and the grant of the corresponding title;
- (d) whether the title and registration are final or provisional;
- (e) term of protection;
- (f) such other particulars as are specified by the Certifying Committee.

Article 35

The Department shall publish a list of titles granted and registrations effected in the Bulletin of the Register of Protected Varieties.

Article 36

A marginal note shall be made in the Register of Protected Varieties, alongside the entry on the variety concerned, of transfers, liens or seizures and any other limitations on the breeder's right.

Without such marginal notes, the said legal acts shall not be binding on third parties.

TITLE IV

Lapse and Invalidity of the Breeder's Right

Article 37

The Certifying Committee may declare the breeder's right lapsed and order the cancellation of an entry in the Register of Protected Varieties and of the corresponding title in the following cases:

- (a) where the protection period has expired;
- (b) where the owner of the right expressly so requests;
- (c) where the breeder fails to provide the Department with such propagating material as permits the variety to be grown with its characteristics as defined at the time of the grant of protection;
- (d) where the breeder of the variety fails to comply with the obligation to keep reference material as provided in Article 20, under (d);
- (e) where, in the event of a registration having been ruled provisional for want of the supporting material to be submitted by the person concerned, the said person fails to submit the material during the agreed term of such provisional registration;
- (f) where the owner has not paid the fees and charges payable for keeping the said registration in force.

The Certifying Committee shall rule on lapse and cancellation on request or after a prior report by the Director of the Department.

Article 38

The breeder's right shall be invalidated in accordance with the general Law where it is found that the conditions concerning the novelty and distinctness of the variety provided by this Law were not effectively met on the date of the grant of the right.

TITLE V

Appeals

Article 39

Decisions of the Certifying Committee concerning the acceptance or rejection of an application for registration, a provisional registration, the lapse of the right to protection, and the cancellation of an entry in the Register of Protected Varieties and of the corresponding title, shall be notified by the Director of the Department in a registered letter sent to the address of the person concerned.

Article 40

Decisions pronounced by the Certifying Committee on any of the subjects specified in the foregoing Article shall be appealable to the Arbitration Tribunal referred to in the fifth paragraph of Article 17 of Law No. 19.039*, hereinafter referred to as "the Arbitration Tribunal." The appeal shall be accompanied by a statement of grounds and be lodged within a period of 15 working days following the date of notification of the contested decision.

Article 41

The appeal shall be lodged with the Director of the Department, who shall transmit it, together with its enclosures, to the Arbitration Tribunal before the end of the third working day.

Article 42

The Arbitration Tribunal may, ex officio or at the request of the interested party, apply to the Director of the Department for reports on the substance of the appeal. It may likewise commission such expert reports as it considers appropriate.

Article 43

No appeal shall lie from the rulings of the Arbitration Tribunal.

* Law Establishing the Rules Applicable to Industrial Titles and the Protection of Industrial Property Rights.

TITLE VI

Offenses and Sanctions

Article 44

The following shall be punished with minor detention or imprisonment of the lowest degree and a fine of five to 50 monthly tax units, without prejudice to the seizure of any material of the variety in his possession:

(a) Any person who, knowing that it is protected, propagates a variety and engages in any act with a view to marketing reproductive material of the variety without the consent of the owner of the breeder's right or without the license referred to in Article 7.

Any person who, without the consent of the owner of the breeder's right, repeatedly uses genetic material of a protected variety in order to produce a new variety shall be liable to the same sanction;

(b) Any person who, knowing that it is protected, offers the variety for sale, distributes, imports, exports or markets or handles it in any way or on any ground so as to make it available for use as reproductive material.

Any person who within the subsequent five years repeats any of the offenses provided for in this Article shall be liable to punishment with minor detention at the intermediate level and up to twice the amount of the fine previously imposed.

Material of the variety seized shall remain at the disposal of the breeder.

Article 45

The Agriculture and Livestock Service, on obtaining knowledge of an offending act that leads it to suspect that one of the offenses provided for in the foregoing Article has been committed, may order the holding or immobilization of the propagated material of the protected variety in so far as the person concerned does not prove the legitimacy of his acquisition within the period allowed him for the purpose.

Where the person concerned fails to submit the appropriate supporting evidence within the said period, which may not be shorter than 30 days, or where the supporting evidence is insufficient, the Service shall, at the same time as it makes the relevant report, inform the court of the measures taken in accordance with the foregoing paragraph, and the court shall be responsible for pronouncing on the maintenance thereof.

Article 46

Breaches of the provisions of this Law that do not constitute offenses in terms of Article 44 shall be liable to administrative sanctions imposed by the Agriculture and Livestock Service in accordance with the procedure laid down in the law constituting the said Service, with fines of one to 30 monthly tax units, and double that amount for the repetition of an offense.

FINAL TITLE

Article 47

Articles 7, 8, 9, 10, 11, 12, 13 and 33 of Decree-Law No. 1.764 of 1977, and also all legal and regulatory provisions in force that are contrary to this Law, are hereby repealed.

Transitional Articles

Article 1

Entries in the Register of Variety or Cultivar Ownership created by Decree-Law No. 1.764 of 1977 shall be considered incorporated as of right in the Register of Protected Varieties established by this Law, and shall remain in force for the periods and under the conditions specified therein.

Article 2

Applications for recording in the Register of Variety or Cultivar Ownership filed under Decree-Law No. 1.764 of 1977 and still pending on the date of entry into force of this Law shall continue to be processed according to the provisions of the said Decree-Law except where the person concerned expressly declares the wish to be made subject to the provisions of this Law.

Article 3

Until such time as the Regulations under this Law are enacted, the Supreme Regulatory Decrees governing the subject matter also provided for in the said Regulations shall continue to apply in so far as they are not contrary to the provisions thereof.

Article 4

Entries in the Register of Marks of the Ministry of Economic Affairs, Development and Reconstruction concerning names of varieties may not be renewed.

Article 5

Any references in Decree-Law No. 1.764 of 1977 or in other laws to the Technical Seeds Unit shall be construed as references to the Seeds Department of the Agriculture and Livestock Service.

Article 6

In the first appointment of members of the Certifying Committee referred to in Article 15, the Minister for Agriculture shall specify for three of them a term of office of three years, in order to establish a system of periodical partial renewal of the membership of the said Committee.