

LAW FOR THE PROTECTION OF NEW VARIETIES OF PLANTS, LAW No. 318 OF THE REPUBLIC OF NICARAGUA

NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

LAW No. 318

It is hereby informed to the Nicaraguan People that

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

in exercising its powers

HAS ENACTED

the following

LAW FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

**CHAPTER I
GENERAL PROVISIONS**

Section 1.- Purpose. The purpose of this Law is to provide the rules for the protection of the rights of individuals or legal entities who, either by natural means or genetic manipulation, have created or discovered and developed a new plant variety, and who shall be called the breeder.

Section 2.- Competent Body. The Ministry of Development, Industry and Trade, by means of the Intellectual Property Registry, (**RPI**, for its initials in Spanish) shall be the agency of the Executive Branch responsible for the administration and implementation of this Law.

Section 3.- Definitions. For the purposes of this Law the following terms shall mean:

Relevant Characteristics: Phenotypic and genotypic expressions, specific of the plant variety, which identify the plant variety as such.

Plant Variety: Plant grouping within a single botanical taxon of the lowest known rank that, without regard to whether the conditions for the granting of a plant breeder's right are fully met, may be:

- a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- b) distinguished from any other plant grouping by the expression of at least one of said characteristics, and
- c) considered a unit with regard to its suitability for being propagated without alteration.

Propagating Material: Any plant reproduction material, which may be used for the production or multiplication of a plant variety, whether by sexual or asexual

reproduction, including seeds for sowing and any whole plant or parts thereof, from which it is possible to achieve the reproduction of whole plants or seeds.

Reference Specimen: The smallest entity used by the breeder to maintain his variety, from which the representative sample is taken for the registration of the variety.

Reproductive or Vegetative Material for Propagation: Seeds, fruits, plants, or parts thereof, including whole plants, which are used in the reproduction of plants.

Breeder: Individual or legal entity who by natural means or genetic manipulation has created or discovered and developed a new plant variety.

Recognized Priority: Precedence for obtaining a plant breeder's right, based on the filing of an application abroad, that totally or partially refers to the same matter that is the subject of a subsequent application filed in Nicaragua.

Protected Variety: A variety subject to a plant breeder's right and recorded in the Intellectual Property Registry (RPI) of the Ministry of Development, Industry and Trade and in respect of which the corresponding breeder's certificate has been issued.

Registry: The Intellectual Property Registry (RPI) of the Ministry of Development, Industry and Trade where the applications and the rights granted to breeders of plant varieties shall be recorded.

Classification Committee: Plant Variety Protection Classification Committee (CCPVV, for its initials in Spanish) established in accordance with Section 69 of this Law.

Breeder's Certificate: Document issued by the Ministry of Development, Industry and Trade, (MIFIC, for its initials in Spanish) which recognizes and protects the breeder's right in respect of a plant variety.

International Convention for the Protection of New Varieties of Plants: Convention adopted on December 2, 1961, and revised in Geneva on November 10, 1972, October 23, 1978, and March 19, 1991, to which States can accede. The objective of the Convention is the protection of plant varieties by means of an industrial property right. It is the legal basis of the International Union for the Protection of New Varieties of Plants (UPOV, for its initials in Spanish).

International Union for the Protection of New Varieties of Plants: (UPOV). Intergovernmental organization with headquarters in Geneva, Switzerland, established by the International Convention for the Protection of New Varieties of Plants. The members thereof are the signatory countries of the Convention.

Section 4.- Legal Protection. This Law grants legal protection to breeders of plant varieties whether nationals of Nicaragua or foreign residents in Nicaragua.

Section 5.- Reciprocity. By virtue of reciprocity, the nationals of any State that grants effective protection to the breeders of plant varieties of Nicaragua shall be beneficiaries of this Law. The State may or not be a member of the International Union for the Protection of New Varieties of Plants (UPOV).

CHAPTER II

PLANT BREEDER'S RIGHTS

Section 6.- Nature of the Plant Breeder's Right. A plant breeder's right shall be considered an intellectual property right and shall be supplemented by the provisions of the Law on Patents for Inventions that is in force.

Section 7.- Characteristics of the Right: The plant breeder's right shall be marketable, transferable, and inheritable. The heir or assignee may exercise this right, derive benefits from it and dispose of it during the term of its duration. The owner of the right may grant exploitation licenses to third parties for the use of the protected varieties.

Section 8.- Scope of the Breeder's Right. The following actions in respect of the propagating material of the protected variety shall require the authorization of the breeder or of the person to whom this right has been granted:

- a) Production or reproduction
- b) Conditioning for the purpose of reproduction or multiplication
- c) Commercialization
- d) Exporting
- e) Importing
- f) Donation

Likewise, the use of ornamental varieties or parts thereof that are normally marketed for purposes other than multiplication shall require the authorization of the breeder if the use is intended for the production or reproduction of said variety.

By means of a public instrument, the breeder may condition the authorization granted by virtue of the aforementioned items to certain conditions and limitations.

Section 9.- The aforementioned provisions shall also apply in relation to:

- a) Varieties that are essentially derived from the protected variety, when the protected variety is not itself an essentially derived variety in accordance with Section 11 of this Law.
- b) Varieties that are not clearly distinguishable from the protected variety in accordance with Section 18 of this Law.
- c) Varieties whose production requires the repeated use of the protected variety.

Section 10.- Application of a Plant Breeder's Right. A plant breeder's right shall apply to the varieties of all plant genera and species.

Section 11.- Essentially Derived Variety. A variety shall be deemed to be essentially derived from an initial variety if:

a) it is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

b) it is clearly distinguishable from the initial variety, and

c) except for differences that result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Section 12.- Exceptions to the Plant Breeder's Right. The use of a protected variety shall not require the authorization of the breeder when:

a) it is the source or raw material for research in the genetic improvement of other plant varieties.

b) the farmer uses the product of the harvest, which has been obtained by planting, for purposes of reproduction or multiplication on his own holdings.

c) the product of the harvest is used or sold for human or animal consumption, or as feedstock.

Section 13.- Renunciation of a Plant Breeder's Right. The breeder, by means of a public instrument, may renounce the rights conferred on him by this Law. The renunciation shall be entered as irrevocable in the corresponding Registry. The plant variety shall become open for use and exploitation by the public.

Section 14.- Judicial Award of a Plant Breeder's Right. When a person who is not entitled to protection files an application for a plant breeder's right, the right holder or rightful claimant may file a request for award of the application or in any case of the right, if the latter had already been granted.

The request for award shall expire five years after the date of publication of the granting of the plant breeder's right. The action against a defendant who has acted with malicious intent shall not be subject to any term.

Based on the plant breeder's right, if the request is upheld, the rights granted to a third party during the lapsed period shall expire.

However, the holders of an exploitation right acquired in good faith, who have taken effective and serious measures to use this right prior to the date of the notice of the request or, failing that, of the decision, may carry out or continue to carry out the exploitation actions resulting from the measures taken, subject to the payment of an equitable remuneration to the rightful claimant.

Section 15.- Right Holder. The individual or legal entity that considers himself the breeder or assignee shall have the right to apply for a plant breeder's right.

When several persons have jointly created or discovered a variety, the right to protection shall correspond to them in a joint manner. Unless otherwise decided by the joint breeders, their rights shall be shared under equal conditions.

When the breeder is considered an employee or worker, the application for the granting of a breeder's right shall be governed by the employment contract under which the variety was created or discovered, in accordance with the law applicable to said contract.

CHAPTER III CONDITIONS FOR THE PROTECTION OF THE PLANT BREEDER'S RIGHT

Section 16.- Protection Conditions. The plant breeder's right shall be granted if the plant variety satisfies the following characteristics:

- a) New
- b) Distinct
- c) Uniform
- d) Stable
- e) It has been designated by a name in accordance with the provisions of Chapter VI of this Law.

The granting of the plant breeder's right shall only depend on the aforementioned conditions and shall be granted provided the breeder has complied with the formalities specified in this Chapter and paid the required fees.

Section 17.- Novelty. The variety shall be deemed to be new if, on the date of filing of the application for a plant breeder's right, the propagating material or a product of the harvest of the variety has not been offered for sale or commercialized by the breeder, the rightful claimant, or assignee:

- a) in the national territory, more than one year prior to said date and
- b) in the territory of any other State, more than four years or, in the case of trees or vines, more than six years prior to said date.

Section 18.- Distinctness. The plant variety shall be deemed to be distinct if it is technically and clearly distinguishable by one or more relevant characteristics from any other variety whose existence is a matter of common knowledge on the filing date of the application. Said characteristics shall be easily recognized by an expert in the matter and shall be precisely described in the corresponding application.

The filing of an application for a plant breeder's right or the registration in a catalogue of varieties authorized for commercialization, in any country, shall be considered to render the said variety a matter of common knowledge from the date of the application, provided that the filing of the application leads to the granting of the plant breeder's right or to the registration of the variety in the catalogue, as the case may be.

The recognition of the existence of another variety may be determined through diverse references such as:

- a) Exploitation of the known variety

b) The entering of the variety in a registry of varieties managed by an accredited professional association

c) Existence of the variety in a reference collection

Section 19.- Uniformity. The plant variety shall be deemed to be uniform if, subject to the predictable variations considering the particular features of its sexual reproduction or its vegetative multiplication, it is sufficiently uniform in its relevant characteristics.

Section 20.- Stability. The plant variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated reproductions or multiplications or, in the case of a particular cycle of reproductions or multiplications, at the end of each cycle.

CHAPTER IV ESTABLISHMENT, DURATION, LIMITATION

Section 21.- Establishment of the Right and Registration Authority. The plant breeder's right shall be established through its entry in the Intellectual Property Registry of the Ministry of Development, Industry and Trade, and the granting of the Breeder's Certificate by the Registry shall be established within the terms and conditions set by this Law.

Section 22.- Duration. The plant breeder's right for all species shall be granted for a period of 20 years as of the date of the granting of the breeder's certificate.

The breeder's right shall remain in force as long as the breeder pays the corresponding fees to the registry and maintains his right in the terms set by this Law.

Upon the expiration of the terms of protection of the plant variety, the variety shall become open for use and exploitation by the public.

Section 23.- Restrictions on the Exercise of Protected Rights. The free exercise of the exclusive right granted to a breeder of plant varieties may only be restricted for reasons of public interest. In such cases, compulsory licenses may be granted for the exploitation of the registered varieties.

When granting a compulsory license, the competent authority shall set an equitable remuneration that the benefited party shall pay to the breeder of the plant variety.

CHAPTER V REGISTRATION AND APPLICATION

Section 24.- Registration of the Rights. The registration of the rights shall be carried out in the Intellectual Property Registry (RPI) of the Ministry of Development, Industry and Trade, MIFIC.

The RPI shall register the applications and the granted rights, distinguishing between the registration of applications and the registration of granted rights. Said registrations shall be public.

The RPI shall keep the original or reproduced documents of the files for five years from the date of withdrawal or rejection of the application or the date of expiration of the plant breeder's right, as the case may be.

Section 25.- Access to the Information. The RPI shall guarantee access to all the information found in their records and any person having a legitimate interest may consult the documents concerning the application and the granting of the plant breeder's rights.

In the case of the varieties whose production requires the repeated use of parent lines, the interested party, upon filing of the application, may request that the documents and tests concerning the components be exempt from the disclosure measures.

Section 26.- Entries in the RPI. The following shall be entered in the Intellectual Property Registry:

- I. The application for plant breeder's right
- II. The documentary proof of the filing of the application
- III. The granting of the plant breeder's rights and of the breeder's certificate stating:
 - a) the name of the protected plant variety.
 - b) the characteristics of the protected variety.
 - c) the species to which it belongs, its scientific and common name.
 - d) name and place of residence of the right holder or holders, assignees, or the legal representative of the plant variety, as well as the corporate name, and
 - e) date of granting and duration of legal effect.
- IV. Renunciation of the rights conferred by this Law
- V. Assignments and encumbrances that, as the case may be, are carried out in respect of the rights conferred by this Law
- VI. Issuance of compulsory licenses conferred by this Law
- VII. Termination of the legal effect of the breeder's rights and breeder's certificate due to lapse or expiration of the respective term, as well as the preventive registration of the procedures to nullify and revoke a breeder's certificate and its final ruling.
- VIII. Statement asserting that the plant varieties have become of public domain.

Section 27.- Recordings. In order to be binding on third parties, breeder's certificates as well as the assignment of rights shall be recorded in the Registry.

Section 28.- Publication. The RPI shall order the publication in *La Gaceta* (Official Gazette) and/or in such media as it considers suitable, of the entries made in the Registry, the applications for breeder's certificate and any information pertinent to this Law. The cost of said publications shall be borne by the breeder.

The RPI shall regularly publish the entries of and applications for new plant varieties with the following information:

- a) Applications for the granting of plant breeder's rights
- b) Applications for plant variety names
- c) Registration of new names for protected varieties
- d) Withdrawal of applications for the granting of plant breeder's rights
- e) Rejection of applications for the granting of plant breeder's rights
- f) Granting of plant breeder's rights
- g) Modifications relating to the persons (applicants, holders, and agents)
- h) Expiration of the plant breeder's rights
- i) Licenses
- j) Official announcements

The cost of these publications shall be fully borne by the parties concerned.

Section 29.- Fees. The administrative actions of the **RPI** lead to the collection of service fees. For all legal purposes, the amounts and fees provided in Section 85 of this Law shall be applied.

Section 30.- Registration of Varieties. The registration of varieties carried out in the MAG-FOR Seed Management Office shall be valid for the purposes set in Law No. 280, Law for the Production and Trade of Seeds, published in *La Gaceta* (Official Gazette) No. 26, on February 9, 1998, with regard to the authorization for their dissemination, commercialization, and other effects, but shall not grant plant breeder's rights.

Section 31.- The Applicant. Any individual or legal entity may apply personally or through a duly authorized agent for breeder status. When a plant variety is created and developed jointly by two or more individuals or legal entities, the application shall specify the share of each joint breeder and designate a joint representative; otherwise, the representative shall be considered to be the first person named.

Section 32.- Form and content of the Application. The application shall be filed with the **RPI** and shall contain at least the following information; otherwise, the application may be refused:

- a) Name and address of the applicant or the applicant's legal representative
- b) If the applicant is not the breeder, the name and address of the breeder
- c) Identification of the species (scientific and common names)
- d) Proposed name of the variety or a temporary designation

e) If the priority of an earlier application is claimed, the application shall indicate the name of the State member of the **UPOV** that received the aforementioned application as well as the date of filing.

f) A technical description of the variety that includes the morphological, physiological, and physicochemical characteristics and the industrial or technological attributes that enable its identification. Drawings, photographs, or any other technical element required to illustrate the description shall accompany the application. The genealogy and origin of the variety shall be specified.

Likewise, the applicant shall indicate the grounds for distinguishability, mentioning the reasons for which he considers that the variety is distinct or unique in respect of existing varieties, well-known varieties, or those that in his judgment are the most similar.

When deemed necessary, the registration authority, based on comparative studies, may alter the grounds for distinguishability or help the applicant to do so.

The application authority may request the applicant to present field tests and/or laboratory test to verify the characteristics attributed to the new variety, when deemed necessary,

g) Address of service

h) Mechanisms of reproduction or propagation and the description of the method used by the breeder to maintain the variety

i) The proof of payment of the application fee

j) Applicant's signature

All other data specified by the Regulations or all additional technical information for the case or species that call for it, as specified by the application authority.

Section 33.- The Proposed Name. The name of the variety shall be proposed in the application for a breeder's certificate in accordance with Section 50 of this Law. When approved, this name shall be different to any other existing name in the country or abroad, shall comply with the rest of the requirements set by the Regulations of this Law and shall not be identical or similar to cause confusion to the name of a previously protected variety.

When the name does not conform to the aforementioned requirements, the Application Authority shall notify the applicant of its rejection and shall direct the applicant to propose another name within a mandatory period of 30 days.

Section 34.- Reception and Processing of the Application. The Application Authority shall receive and process the applications for breeder's certificates, either on its own account or at the request of the Plant Variety Protection Classification Committee (**CCPVV**), requesting the deposit of an adequate amount of the plant variety or its propagating material and, when appropriate, the complementary documents and information deemed necessary to verify the compliance with the legal and regulatory requirements.

Section 35.- Refusal of the Application. The applications shall be rendered null and void when the applicant fails to comply with the requested requirements within three months from the corresponding notification.

Section 36.- Date of Filing. A date of filing will be assigned to each completed application in the order received by the Application Authority. The date of filing shall be the date in which the Application Authority received the items of information specified in this Title.

Section 37.- Priority. The applicant may claim before the authority of a UPOV member State, the right of priority of an earlier application for the same variety duly filed by himself or his predecessor in title. If the application filed with the application authority has been preceded by several applications, the priority may only be based on the first.

Section 38.- Priority Claim. Priority shall be expressly claimed within twelve (12) months from the next succeeding day of the date of filing of the first application.

To claim the priority of an application originally filed in a foreign country, the application filed with the Application Authority shall not intend the granting of other rights in addition to those derived from the application filed abroad.

Section 39.- Obligation to Submit Documents. In order to be entitled to a right of priority, the applicant shall submit a copy of the documents to the Application Authority within three months from the date of filing, in the manner and with the formalities set by the Regulations of this Law.

The Application Authority may require the submittal, within three months from the date of receipt of the notice, of a translation of the first application or of any of its core documents.

Section 40.- Effects of the Priority. With respect to the protection conditions associated with the variety, the effect of the priority shall be that the application shall be considered to have been filed on the date of filing of the first application.

Section 41.- Postponement of the Examination. The applicant may request a postponement of the examination of the variety for a maximum of two years as of the expiration date of the period of priority. However, if the first application is rejected or withdrawn, the examination of the plant variety may commence before the date indicated by the applicant. In this case, the applicant shall be given an appropriate period of time to provide the relevant information and material for the examination of the variety.

Section 42.- Preliminary Examination of the Application. The application shall comply with the specified requirements with regard to content and form. If the application is incomplete, the RPI shall notify the applicant that he has thirty (30) calendar days to present the missing information. If the information is not provided upon expiration of this term, the application shall be considered as not having been filed.

Section 43.- Technical Examination of the Variety. The variety shall be the subject of a technical examination with the purpose of proving that the variety is distinct, uniform, and stable. Once determined that the variety meets these conditions, the official description of the variety shall be specified.

The MAG-FOR Seed Management Office under the mandatory supervision of the Plant Variety Protection Classification Committee (CCPVV) shall carry out the technical examination and that of the name.

The applicant shall pay the cost of the technical and name examinations directly to the institution that practices said examinations. The cost shall be determined by the materials used and the services rendered.

The official description may be completed or amended thereafter in terms of the advancement of knowledge in the agricultural and botanical fields without this modifying the subject matter of the protection.

Section 44.- Information, Documents, and Materials Necessary for the Examination. The applicant shall provide all the necessary information, documents, or materials for the purposes of the technical examination and that of the name.

Section 45.- Cooperation in the Matter of the Examination. The Ministry of Agriculture and Forestry (MAG-FOR, for its initials in Spanish), through the Seed Management Office, may reach administrative cooperation agreements concerning the examination of varieties and verification of the maintenance of plant varieties.

Section 46.- Publication of the Application. The applications shall be published by the Application Authority in *La Gaceta* (Official Gazette) and/or in such media as the Application Authority considers suitable, and shall include the items mentioned in the Regulations of this Law. The cost of said publications shall be borne by the breeder.

Section 47.- Substantive Examination of the Application. The content of the application shall be examined so as to prove that the variety complies with the requirements based on the submitted information and that the applicant is authorized according to the provisions set in this Law. If this is not the case, the application shall be rejected.

Section 48.- Objections to the Granting of a Plant Breeder's Right. Once the application is published, any person may file an objection to the granting of a plant breeder's right in accordance with the Regulations of this Law.

Section 49.- Granting of a Plant Breeder's Right or Rejection of the Application. The RPI shall grant a plant breeder's right when the technical examination and that of the name of the variety prove that the plant variety complies with the requirements of this Law.

The granting of a plant breeder's right or the rejection of an application shall be entered in the Intellectual Property Registry (RPI) and shall be published in *La Gaceta* (Official Gazette). Upon issuance of the Breeder's Certificate, the name shall be final even when the plant variety becomes of public domain.

CHAPTER VI NAME AND MAINTENANCE OF PLANT VARIETIES

Section 50.- Name. The name is intended to be the generic designation of the variety. It may consist of all the words, combinations of words and figures, and combinations of letters and figures that may have a prior meaning or not, provided that such symbols identify the variety. The name may consist solely of figures only when this is a customary practice for designating varieties.

A pre-existent variety of the same plant species or of a closely related species shall be different from any name that it designates in any of the Member States of the **UPOV**.

Section 51.- Prohibition in the Use of the Name. A pre-existent name of a variety of the same plant species or a closely related species shall be different from any name that designates it in the territory of Nicaragua or in any State. Registering the name of any plant variety as a mark is prohibited.

Section 52.- Commercialization Conditions. Any person who commercializes propagating material of a protected variety shall use the corresponding name.

When a variety is offered for sale or commercialized in another way, it shall be permitted to associate a trademark, trade name, or other similar indication with the registered name of the variety, provided that the name may be easily recognized.

The obligation to use the registered name of the variety shall remain in effect even though the plant breeder's right has expired upon the variety becoming of public domain.

Section 53.- Grounds for Rejection. Designations shall be denied registration as the name of varieties when they:

- a) do not comply with the provisions of Section 51 of this Law.
- b) are not suitable for the identification of the variety, particularly when they do not clearly distinguish the variety or when the linguistic adaptation is deficient.
- c) are contrary to public policy and good morals.
- d) consist exclusively of signs or indications that may mislead or cause confusion concerning the characteristics, designation of the species, quality, use, value, geographic origin, production season, or the identity of the breeder.
- e) are a registered trademark or are in the process of registration.
- f) are similar to and may be confused with the name that designates a pre-existent variety of the same species or a closely related species in the territory of Nicaragua, unless the pre-existent variety is no longer in use and its name has not acquired a particular significance.

Section 54.- Registration Procedures. The proposed name of a variety sought to be protected shall be filed at the same time as the application. The applicant may postpone the registration procedure of the name for thirty (30) days as of the date of receipt of the application subject to the payment of a special fee and the mention of a temporary designation in the application. If the proposal is not filed within the set period, the application shall be rejected.

Section 55.- Objections by Third Parties. An objection to the registration of the name may be filed based on any of the reasons for rejection provided in Section 53 of this Law.

The applicant shall be notified of the objections and comments so that he may take action.

Once the response of the applicant has been reviewed and it has been found that the objection has merit, the applicant shall file a new proposed name.

Section 56.- Name Registration and Cancellation. The RPI shall cancel the registered name when:

a) it is found that a name has been registered regardless of the provisions of Sections 51 and 53 of this Law.

b) the existence of a legitimate interest is cited, or

c) a third party has filed a judicial ruling that prohibits the use of the name in connection with the variety.

The owner shall be notified of the cancellation and shall be summoned to submit a proposed name that shall be subject to the examination and publication procedures provided in this Law. The new name shall be registered and published as soon as approved. The former name shall be cancelled at the same time.

Section 57.- Maintenance of the Variety. During the duration of the breeder's right, the holder shall maintain the protected variety or, when applicable, its hereditary components.

Every year, the holder shall submit the information, documents, or materials required for the verification of the maintenance of the variety.

CHAPTER VII ASSIGNMENT OF RIGHTS AND COMPULSORY LICENSES

Section 58.- Assignment of the Right. The rights conferred to a breeder entitle to execute all legally admissible transactions in relation with these rights. These rights may be wholly or partly assigned by means of a legal instrument executed before a Notary Public.

Section 59.- Procedure. For the assignment of the rights mentioned in this Law, the beneficiary or assignee of said rights must submit the following to the RPI:

a) Name, nationality and place of residence

b) Documents that evidence the assignment of the rights and, when appropriate, the obligation to maintain the relevant characteristics of the plant variety or of the propagating material thereof should they be commercialized and exploited.

Section 60.- Obligations. In the event of a total assignment, the beneficiary or assignee shall take on all the obligations and rights that arise from the breeder's certificate with the exception of what is provided in this Law.

Section 61.- Registration. The assignment of the rights shall take effect when they are registered in the RPI in accordance with this Law.

Section 62.- Protection of the Rights. Unless otherwise agreed, the beneficiary or assignee may exercise legal actions for the protection of the plant breeder's rights as if he were the holder.

Section 63.- Other Responsibilities. A person who receives material from a protected plant variety shall be responsible for any given use or exploitation different from that prescribed by this Law and its Regulations.

Section 64.- Granting. The RPI may grant compulsory licenses in any of the following cases:

- a) when the protected variety is declared to be of public interest.
- b) when the exploitation of the protected plant variety is declared vital to meet the basic needs of a sector of the population, and when there is an insufficient supply, or
- c) when incorrect practices are carried out affecting free competition.

Section 65.- Application for Compulsory Licenses. In the cases indicated in Section 64 of this Law, any person may request the granting of a compulsory license corresponding to a plant breeder's right, under the following conditions:

- a) The applicant shall prove that he is capable of carrying out the exploitation and that he has tried to obtain, without success, for a reasonable time, the authorization of the holder of the rights under reasonable terms and market conditions.
- b) Three years have elapsed from the date of the granting of the plant breeder's right and the date of the application for the granting of the compulsory license.
- c) The person requesting the granting of the compulsory license has paid the fee as prescribed in the Regulations.

Section 66.- Conditions Concerning a Compulsory License. The compulsory license shall be granted to supply the domestic market, and the holder shall receive adequate remuneration. In absence of agreement, the competent judicial authority shall set the amount and method of payment.

A compulsory license may not be granted as an exclusive license. Additionally, the compulsory license is nontransferable, and the rights of the holder of the plant variety shall be fully restored when the term of the license expires.

Section 67.- Granting of Compulsory Licenses. The compulsory license granting resolution shall specify the scope of the license, its term (minimum two years and maximum four years), and the amount and method of payment of the remuneration due to the holder.

Section 68.- Revocation and Amendment of the Compulsory License. A compulsory license may be totally or partially revoked by the competent judicial authority, at the request of any interested party, if the beneficiary of the license fails to fulfill the obligations to which he or she is bound and if the circumstances that gave rise to the license have ceased to exist and are unlikely to arise again. In the latter case, the authority may dictate the necessary provisions to adequately protect the legitimate interests of the beneficiary affected by the revocation.

A compulsory license may be amended by the Application Authority, upon request of the interested party, when new facts or circumstances warrant it, especially when the

holder of the plant variety has granted more favorable contractual conditions than those agreed upon with the beneficiary of the compulsory license.

CHAPTER VIII PLANT VARIETY PROTECTION CLASSIFICATION COMMITTEE

Section 69.- Establishment. The Plant Variety Protection Classification Committee is hereby established under the administration of the Ministry of Agriculture and Forestry (MAG-FOR) and which shall be required to provide technical advice on:

- a) the applications for plant breeder's right.
- b) the execution and evaluation procedures for the technical field and laboratory tests.
- c) the development of suitable standards relative to the characterization and evaluation of plant varieties for descriptive purposes, and
- d) others as indicated by the Regulations of this Law.

Section 70.- Composition and Operation. The Plant Variety Protection Classification Committee (CCPVV) shall consist of the substantive areas of the Ministry of Development, Industry and Trade; the Ministry of Agriculture and Forestry, and the Ministry of the Environment and Natural Resources as set by the Regulations of this Law that shall determine its structure and operation. Additionally, representatives of the *Universidad Nacional Agraria* (UNA), the *Universidad Nacional de León*, and other centers specialized in the subject shall also be part of the Committee.

CHAPTER IX PROCEDURES AND NOTICES

Section 71.- Procedures. The procedures specified herein with regard to the grounds for nullity, lapse and penalties shall be substantiated and resolved in accordance with this Law.

Section 72.- Notice. In the administrative procedures for nullity, lapse and imposition of penalties, the other party or a potentially damaged third party shall be notified so that, within a period of thirty business days following notification, the party may state in writing whatever may be in its best interest.

CHAPTER X NULLITY

Section 73.- Grounds for Nullity. The plant breeder's right over a plant variety shall be declared null and void by the judicial authority only in the following cases:

- a) when the variety is not new or distinct on the date of filing of the application or, if applicable, on the date of filing of the priority.
- b) when the granting of the plant breeder's right was decided based on the information and documents submitted by the applicant and the variety was not uniform or stable at that time.
- c) when the plant breeder's right was granted to a person who was not entitled to it, unless it was assigned to the person entitled to the right.

Section 74.- Party Asserting Nullity. Any person who substantiates an interest shall be entitled to file a petition to nullify.

CHAPTER XI LAPSE

Section 75.- Grounds. A plant breeder's right and its registration shall lapse only in the following cases:

- a) If it is determined that the protected variety in fact no longer meets the conditions of uniformity and stability
- b) Failure to pay the annual fee within three months following the certified request thereof
- c) The breeder fails to submit the propagating material of the protected plant variety to the Competent Authority within six months from the date it was requested.
- d) Failure to submit to the competent authority within the set period the documents or information deemed necessary for the verification of the maintenance of the variety.
- e) When the RPI cancels the registered name of a variety, pursuant to Section 56 of this Law, and the right holder does not propose another suitable name within the given time period.

Section 76.- Party Asserting Lapse. The RPI or any individual or legal entity that substantiates an interest shall be entitled to file an application for revocation on the grounds of lapse.

Section 77.- Becoming of Public Domain. Should a plant breeder's right be found to have lapsed, in accordance with Section 75, subsections a) and b) of this Law, the plant variety in question shall become of public domain.

CHAPTER XII ACTIONS FOR INFRINGEMENT OF RIGHTS

Section 78.- Fraud Related to Names of Varieties. Without prejudice to the consequential damages and loss of profits that may be pleaded, any individual or legal entity that uses the name of a protected variety without the authorization of the right holder and who omits to use the registered name in violation of the provisions of this Law shall be penalized with a fine of C\$ 200,000.00 (two hundred thousand cordobas) to C\$ 900,000.00 (nine hundred thousand cordobas) applying the exchange rate approved by the *Banco Central de Nicaragua* on that date.

Section 79. Civil Remedies. The breeder or licensee of a plant variety may report any unauthorized person who engages in acts that require the authorization of the holder of a plant variety right, uses the name or omits to use the name of a protected variety in violation of the provisions of this Law. In these cases, the customary civil procedure provisions for industrial property rights, as set in the Law on Patents for Inventions currently in force, shall be applied.

Section 80.- Sanctions under Criminal Law. Any act that involves the improper use of the plant breeder's right and any infringement committed with full knowledge of the

facts shall constitute a punishable offense for the purposes of this Law. In this case, the provisions, procedures, and penalties provided in criminal law shall be applicable.

Section 81.- Precautionary Measures. Any person filing a claim for the infringement of a right protected by this Law may request that the competent authority order immediate precautionary measures to prevent the perpetration of the infringement.

The following precautionary measures, among others, may be ordered:

- a) immediate suspension of the infringement acts;
- b) withdraw from or impede circulation of the propagating materials of the protected plant variety that infringe the rights protected by this Law.
- c) withdraw from circulation the objects, packing, containers, packaging, paperwork, advertising material, and the like that would infringe any of the rights protected by this Law.
- d) seizure or confiscation of the products produced by the infringement and of the materials and means used to commit the infringement.
- e) suspension of the exploitation of the products, materials, or means mentioned in the previous subsections.
- f) posting of a bond or other guarantee considered sufficient by the competent judicial authority; and
- g) request the presentation of documents or personal property.

Section 82.- Guarantees and Conditions in the Event of Precautionary Measures. A precautionary measure shall be ordered only when the requesting party proves its legal standing and the existence of an infringed right. The competent authority shall require that the party requesting the precautionary measure previously submit sufficient guarantees in accordance with the Civil Procedural Code.

Any person requesting a precautionary measure with respect to certain merchandise shall submit the required information and a precise description identifying the merchandise subject of the measure.

Section 83.- Appeal by the Affected Party. When a precautionary measure has been carried out without the intervention of the other party, notification shall be given within three days. The affected party may appeal to the competent authority with regard to the actions carried out. The authority may revoke, modify, or confirm the precautionary measure.

Section 84. Duration of the Precautionary Measure. Any precautionary measure shall be rendered null and void by operation of law if the main infringement act does not initiate within 15 business days starting as of the date of the execution of the precautionary measure. It may be decreed at the request of a party or *ex officio* by the competent authority dealing with the case, who shall order payment of court costs and damages by the party requesting the precautionary measure.

CHAPTER XIII

FEES AND OTHER PAYMENTS

Section 85.- Fees. The breeder shall pay the fees set by the Application Authority for the following items:

- a) plant breeder's application
- b) petition concerning a modification, change, correction, assignment, or license
- c) issuance of a duplicate of the certificate
- d) information services
- e) substantive examination

The annual fee for maintenance of protection rights shall be C\$5,000.00 (Five thousand cordobas).

The set amount shall be paid in national currency of legal tender applying the exchange rate as determined by the *Banco Central de Nicaragua* on the date of the transaction.

The amount payable for the technical and substantive examinations shall be determined by the Application Authority considering the costs and technical service rendered by the Authority or by the institution or institutions that, with the appropriate guidance from the Plant Variety Protection Classification Committee (CCPVV), have provided technical assistance for the tests.

Section 86.- Information Services. The Application Authority shall provide the services and documentation as required by this Law and subject to the payment of the previously fixed fee.

Section 87. Methods of Payment of the Annual Fee for Maintenance of Protection Rights. The annual fee shall be paid to maintain the certificate of plant variety protection in force. The first payment shall be made upon filing of the application and the subsequent fees shall be paid by January 31 of each year.

CHAPTER XIV TEMPORARY AND ADMINISTRATIVE PROVISIONS

Section 88.- Temporary Derogation of the Novelty Condition and Temporary Establishment of the Term of Protection

1) Those varieties registered in the Registry of varieties, instituted by Law No. 280, Law on Seed Production and Trade, for a period no greater than five years prior to the entry into force of this Law, shall be regarded as not having lost their novelty.

2) Likewise, it shall be considered that the varieties entered in a registry of protected varieties of another country have not lost their novelty.

With regard to the term of protection and subject to the compliance to all the other requirements provided in this Law, the Application Authority may grant a plant

breeder's right to the varieties described in paragraphs one and two for the term of protection:

a. that results from the difference between the national term of protection and the years that the variety has appeared in the Registry of Cultivated Varieties, for the varieties mentioned in paragraph one, and

b. that results from the difference between the national term of protection and the years that the variety has been protected in the country of origin, for the varieties mentioned in paragraph two. Should the same variety be protected in several countries, the longest term of protection shall be applied for this purpose.

In order to be entitled to the novelty condition as described in paragraphs (1) and (2) and the terms of protection indicated in subsections (a) and (b), the plant breeder's right for the variety in question shall be filed within one year as of the application of the plant breeder's rights in Nicaragua.

CHAPTER XV FINAL PROVISIONS

Section 89.- This Law shall provide the protection of the intellectual property rights of the breeder. The rights to import, distribute, and commercialize seeds shall be subject to the regulations established in Law on Seed Production and Trade, Law No. 280, published on February 9, 1998, in *La Gaceta* (Official Gazette) No. 26.

Section 90.- Regulations. This Law shall be regulated in accordance with Section 150 of the Political Constitution.

Section 91.- Effective Date. This Law shall take effect ninety days after its publication in *La Gaceta* (Official Gazette).

Granted in the City of Managua, in the National Assembly Meeting Room, on October 20, 1999. **IVAN ESCOBAR FORNOS**. President of the National Assembly. **VICTOR MANUEL TALAVERA HUETE**. Secretary of the National Assembly.

Therefore, publish and enforce and hold as Law of the Republic. Managua, November 12, 1999. **ARNOLDO ALEMÁN LACAYO**, President of the Republic of Nicaragua.