

PLANT BREEDERS' RIGHTS AMENDMENT ACT

PRESIDENT'S OFFICE

No. 673. 19 April 1996

NO. 15 OF 1996: PLANT BREEDERS' RIGHTS AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words *in bold italics* indicate omissions from existing enactments.

Words *in italics* indicate insertions in existing enactments.

ACT

To amend the Plant Breeders' Rights Act, 1976, so as to insert certain definitions and to substitute or delete others; to further regulate the varieties to which the Act applies; to further regulate the delegation of functions by the Registrar of Plant Breeders' Rights; to further regulate applications for plant breeders' rights; to make further provision for the denomination of varieties; to make further provision for the rejection of applications for plant breeders' rights; to make further provision for the hearing of an objection to the grant of a plant breeder's right; to make further provision for the consideration and examination of an application for a plant breeder's right; to prescribe anew the period for which a plant breeder's right shall be granted; to further regulate the rights of a holder of a plant breeder's right; to define the infringement of a plant breeder's right; to further regulate the termination of a plant breeder's right; to make further provision for the secrecy of certain information; to further regulate the appeal against a decision of or action by the registrar; to further regulate offences and to increase penalties; to further regulate compensation for the infringement of a plant breeder's right; and to delete certain obsolete points connected therewith.

(Afrikaans text Signed by the president.) (Assented to 16 April 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 15 of 1976, as amended by section 1 of Act 5 of 1980, section 1 of Act 14 of 1981 and section 1 of Act 38 of 1983

1. Section 1 of the Plant Breeders' Rights Act, 1976 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for the definition of "advertise" of the following definition:

" 'advertise' means to distribute to members of the public or to bring to their notice in any manner whatsoever any written, illustrated, visual or other descriptive material, oral statement, communication, representation or reference with the intention to promote the sale of *any plants or*

any propagating material of a *new* variety referred to in section 2 or to encourage the use thereof or to draw attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise be acquired;"

(b) by the substitution for the definition of "breeder" of the following definition:

" 'breeder' in relation to a *new* variety referred to in section 2, means *the person who directed the breeding of the new variety, or who developed or discovered it -*

(a) the person who bred, or discovered and developed, the variety;

(b) the employer of the person referred to in paragraph (a), if that person is an employee whose duties are such that the variety was bred, or discovered and developed, in the performance of such duties; or

(c) the successor in title of the person referred to in paragraph (a) or the employer referred to in paragraph (b);";

(c) by the substitution for the definition of "denomination" of the following definition:

" 'denomination', in relation to a *new* variety in respect of which a plant breeder's right has been granted, means the generic name for the *new* variety;"

(d) by the insertion after the definition of "department" of the following definition:

" '*essential characteristics*' means *the essential characteristics of a variety of a plant as expressed by means of a test or trial or any other acknowledged means of determining the characteristics of a variety of a plant;*"

(e) by the deletion of the definition of "new variety";

(f) by the substitution for the definition of "plant" of the following definition:

" '*plant*' includes *any part of a plant;*"

(g) by the substitution for the definition of "propagating material" of the following definition:

" 'propagating material' means any *reproductive and vegetative propagating* material *as such, of a variety of a plant that can be used for the propagation of a plant;*"

(h) by the insertion after the definition of "propagating material" of the following definition:

" '*protected variety*' means *a variety of a plant in respect of which a plant breeder's right has been granted;*" and

(i) by the substitution for the definition of "variety " of the following definition:

" 'variety' means *any cultivar, clone, breeding line or hybrid of a kind of plant which can be cultivated any plant grouping within a single botanical taxon of the lowest known classification,*

which grouping, irrespective of whether or not the conditions for the grant of a plant breeder's right are fully met, can 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 the said characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged."

Substitution of section 2 of Act 15 of 1976, as amended by section 2 of Act 5 of 1980

2. The following section is hereby substituted for section 2 of the principal Act:

"Application of Act

2. (1) This Act shall apply in relation to every variety of any prescribed kind of plant if it is new, distinct, uniform and stable.

(2) A variety referred to in subsection (1) shall be deemed to be-

(a) new if propagating material or harvested material thereof has not been sold or otherwise disposed of by, or with the consent of, the breeder for purposes of exploitation of the variety-

(i) in the Republic, not more than one year; and

(ii) in a convention country or an agreement country, in the case of-

(aa) varieties of vines and trees, not more than six years; or

(bb) other varieties, not more than four years, prior to the date of filing of the application for a plant breeder's right;

(b) distinct if, at the date of filing of the application for a plant breeder's right, it is clearly distinguishable from any other variety of the same kind of plant of which the existence on that date is a matter of common knowledge;

(c) uniform if, subject to the variation that may be expected from the particular features of the propagation thereof, it is sufficiently uniform with regard to the characteristics of the variety in question;

(d) stable if the characteristics thereof remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(3) If the application of this Act is extended to a kind of plant to which this Act, or any law repealed by it, did not previously apply, the registrar may deem a variety of such a kind of plant which existed at the time of the extension to be new for the purposes of subsection (2)(a), notwithstanding the fact that propagating material or harvested material thereof was sold or disposed of prior to the periods

of time referred to in that subsection.

(4) If an application, in any country, for the grant of a plant breeder's right in respect of, or for the entering in the official register of varieties of, a variety in fact leads to the grant of a plant breeder's right in respect of, or to the entry in the official register of, that variety in the country in question, the existence of that variety shall, as from the date of the application, for the purposes of subsection (2) (b), also be deemed to have been a matter of common knowledge."

Amendment of section 3 of Act 15 of 1976

3. Section 3 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

"(1) The Minister shall designate an officer in the department as the Registrar of Plant Breeders' Rights, who shall be the authority to whom the protection of *new plant* varieties is entrusted, and who shall exercise the powers *perform the functions* and carry out the duties *conferred upon* assigned to or imposed upon the registrar under this Act.

(2) The registrar shall exercise his *or her* powers *perform his functions* and carry out his *or her* duties subject to any instructions issued by the Minister.

(3) (a) *Any power conferred upon, function assigned to or duty imposed upon the registrar may be exercised, performed or carried out by the registrar personally or by an officer under the delegation, control or direction of the registrar. The registrar may authorize any officer, or with the approval of the Minister any person who is not an officer, to exercise or carry out any power or duty of the registrar.*

(b) Any decision made or order given by any such officer *or any such person*, may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made by the registrar."

Amendment of section 6 of Act 15 of 1976, as substituted by section 4 of Act 5 of 1980 and amended by section 2 of Act 14 of 1981

4. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

(1) An application for the grant of a plant breeder's right may be made by -

(a) *the breeder of a new variety of a kind of plant referred to in section 2 (1); or*

(b) if the breeder is an employee (irrespective of whether or not he is paid a salary) whose duties are such that they involve plant breeders' activities relating to the kind of plant in question, and the new variety in question was bred in the performance of such duties, the employer of such breeder; or

(c) the successor in title of the breeder or employer referred to in paragraphs (a) and (b) respectively .".

Amendment of section 7 of Act 15 of 1976, as substituted by section 5 of Act 5 of 1980 and

amended by section 3 of Act 14 of 1981

5. Section 7 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) that such additional information or specimens as he *or she* may deem necessary to determine whether or not the variety concerned constitutes a *new* variety referred to in section 2, be furnished to him *or her*."

Amendment of section 8 of Act 15 of 1976, as amended by section 6 of Act 5 of 1980

6. Section 8 of the principal Act is hereby amended-

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"If an application in terms of section 7 is preceded by an application by or on behalf of the same applicant for protection of the same *new* variety in a convention country or an agreement country and the last-mentioned application has been deposited in accordance with the laws in force in that country, the registrar shall, notwithstanding the provisions of subsection (1) of this section, give priority to the first-mentioned application if-";

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) it is submitted to the registrar in the prescribed *form manner* within *the prescribed* a period of *12 months* of the date on which such preceding application was duly deposited in a convention Country or an agreement country;" and

(c) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) A claim referred to in subsection (2)(b) shall within the prescribed period, *which shall not be less than three months*, of the date on which it was submitted to the registrar, be confirmed by lodging with the registrar a copy, certified as correct by the appropriate authority in the convention country or agreement country in question, of each document which constituted the relevant preceding application.

(4) An application given priority under subsection (2) shall, within the prescribed period, which shall *not exceed 4 be less than two* years, reckoned from the date on which the *prescribed* period of *12 months* contemplated in subsection (3) (2) expired, be confirmed by supplementing it in any respect necessary in order to comply with the requirements of this Act.

(5) If two or more applications for the protection of the same *new* variety have been deposited on different dates in different convention countries or agreement countries, the period referred to in subsection (2)(a) shall be calculated from the date on which the earliest of such applications was deposited with the appropriate authority."

Amendment of section 10 of Act 15 of 1976, as substituted by section 8 of Act 5 of 1980

7. Section 10 of the principal Act is hereby amended-

(a) by the substitution for the heading of the following heading:

"Denomination of variety";

(b) by the substitution for subsection (1) of the following subsection:

"(1) The denomination of a *new variety referred to in section 2* shall comply with the prescribed requirements and be proposed by the person who applies for the grant of a plant breeder's right in respect thereof, and such denomination shall be subject to the approval of the registrar."; and

(c) by the addition of the following subsection:

"(4) *A variety shall be submitted to the registrar under the same denomination as the denomination by which it is known in any other country, unless the registrar considers the denomination unacceptable in which case the applicant shall submit an alternative denomination.*"

Amendment of section 11 of Act 15 of 1976, as amended by section 9 of Act 5 of 1980

8. Section 11 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:

"(i) is not a *new variety referred to in section 2*";

(b) by the deletion in subsection (1) of the word "or" at the end of paragraph (h), and the substitution for paragraph (i) of the said subsection of the following paragraph:

"(i) that, where such application has been preceded by an application by or on behalf of the same applicant for protection of the same variety in a convention country or an agreement country, the description submitted to him *or her* differs from the description submitted in such preceding application or that the description in such preceding application does not describe a *new variety referred to in section 2*; *or*"; and

(c) by the addition to subsection (1) of the following paragraph:

"(j) *that the provisions of section 19 have not been complied with at the filing of the application.*"

Amendment of section 18 of Act 15 of 1976

9. Section 18 of the principal Act is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:

"(4) The procedure at the hearing of an objection shall be *determined by the registrar as prescribed.*

(5) The person objecting and the person who applied for the plant breeder's right in question may, if he *or she* appears before the registrar at the hearing of an objection, be represented by an advocate or an attorney or by a patent agent registered under *section 89 of the Patents Act, 1952 (Act 37 of 1952)*

section 20 of the Patents Act, 1978 (Act No. 57 of 1978)."

Amendment of section 19 of Act 15 of 1976, as amended by section 12 of Act 5 of 1980 and section 3 of Act 38 of 1983

10. Section 19 of the principal Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) The registrar shall, in order to enable him or her to determine whether a variety qualifies for the grant of a plant breeder's right under section 2-

(a) undertake or cause to be undertaken such tests and trials as he or she may deem necessary with a variety in respect of which an application is being considered under subsection (1); or

(b) use the results of tests and trials obtained from the appropriate authority in a convention country or an agreement country in terms of an agreement referred to in section 5A in order to enable him to determine whether such a variety is a new variety . "; and

(b) by the addition of the following subsections:

"(5) The person whose application for the grant of a plant breeder's right is being considered shall furnish the registrar within 12 months from the lodging of the application with everything required by the registrar at the examination of the application, including, where applicable-

(a) plant material for the undertaking of tests and trials;

(b) documents or other proof;

(c) written undertaking or suitable guarantees for the reimbursement of costs;

(d) information required by the registrar; and

(e) any additional plant material, documents, proof, information, undertakings or Guarantees required by the registrar in order to enable him or her to do a proper examination.

(6)(a) The registrar may in writing on application grant extension from compliance with subsection (5) for a specified period of time.

(b) An application for extension shall be submitted to the registrar in writing and shall set out reasons for the granting of extension."

Amendment of section 20 of Act 15 of 1976, as amended by section 4 of Act 38 of 1983

11. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

(1) If the *The registrar shall*, after considering an application in terms of section 19 and examining the results of any tests or trials conducted with the variety in question, *is of the opinion grant a plant*

breeder's right in respect of a variety if-

- (a) that the application conforms to the requirements of this Act;
- (b) that the applicant is entitled under this Act to make the application; *and*
- (c) that the variety is a *new* variety referred to in section 2 and that it conforms to the requirements of this Act; and that*
- (d) *no moneys are due by the applicant in terms of section 19 he shall grant a plant breeder's right in respect of such new variety .".*

Substitution of section 21 of Act 15 of 1976, as substituted by section 13 of Act 5 of 1980

12. The following section is hereby Substituted for section 21 of the principal Act:

"Period of plant breeder's right

21. A plant breeder's right shall be granted for the a period prescribed in respect of the kind of plant in question, which period shall be of-

- (a) *25 years, in the case of vines and trees; and*
- (b) *20 years, in all other cases, calculated from the date on which a certificate of registration is issued under paragraph (a) of section 20(2).".*

Substitution of section 23 of Act 15 of 1976, as amended by section 14 of Act 5 of 1980 and sections 46 and 47 of Act 97 of 1986

13. The following section is hereby substituted for section 23 of the principal Act:

"Rights of holder of plant breeder's right

23. (1) The effect of the protection given under this Act by the grant of a plant breeder's right shall be that prior authority shall during the currency of the plant breeder's right be obtained by way of licence under section 25 or 27 by any person intending to undertake the production, sale, import into or export from the Republic -

- (a) *production or reproduction (multiplication);*
- (b) *conditioning for the purpose of propagation;*
- (c) *sale or any other form of marketing;*
- (d) *exporting;*
- (e) *importing;*
- (f) *stocking for any of the purposes referred to in paragraphs.(a) to (e), of-*

(i) propagating material of the relevant new variety; or

(ii) harvested material, including plants, which was obtained through the unauthorised use of propagating material of the relevant variety.

(1A) (2) The Minister may by notice in the Gazette and as from a date mentioned therein extend the effect of the protection given by a plant breeder's right also to the sale of any product, normally not used as propagating material, of the variety in respect of which that plant breeder's right was granted contemplated in subsection (1) to products made directly from harvested material contemplated in subsection (1)(ii).

(3) The provisions of subsections (1) and (2) shall not apply if the breeder has had reasonable opportunity to exercise his or her right in respect of the propagating material of the protected variety.

(4)(a) The provisions of subsections (1), (2) and (3) shall also apply to varieties-

(i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(ii) which are not distinguishable from the protected variety as contemplated in section 2(2)(b); or

(iii) the production of which requires the repeated use of the protected variety.

(b) For the purposes of paragraph (a)(i) a variety shall be deemed to be essentially derived from another variety if-

(i) it is predominantly derived from that other variety, or from a variety that is itself predominantly derived from that other variety, while retaining the essential characteristics of that other variety; and

(ii) it is clearly distinguishable from that other variety ; and

(iii) except for the differences which result from the process of derivation, it conforms to that other variety in respect of the essential characteristics.

*(2) (5) Notwithstanding the provisions of subsection (1), the holder of a plant breeder's right shall during the period which the Minister may prescribe as a period for the exercise of sole rights in terms of section 25(4) in respect of the kind of plant to which such *new a* variety belongs, have the sole right to undertake with regard to the relevant *new* variety any activity referred to in *that* subsection (1) or to have such activity undertaken by any other person.*

*(3) (6) It shall not be an infringement of a plant breeder's right if Notwithstanding the provisions of section 23A(a), a person who procured any propagating material of a *new* variety in a legitimate manner which does not infringe any right of the holder of the relevant plant breeder's right shall not infringe the plant breeder's right in respect of the variety if he or she-*

(a) resells it that propagating material;

(b) *subject to the provisions of subsection (2), sells any plant, propagating reproductive material or product derived therefrom from that propagating material for purposes other than the further propagation or multiplication thereof Provided that the provisions of this paragraph shall not permit the sale of a product if such sale is in terms of subsection (1A) subject to a plant breeder's right; or ;*

(c) *uses or multiplies it that propagating material in the development of a hybrid or a different variety or for purposes of any other bona fide research: Provided that the repeated use, without the necessary authority, of the relevant propagating material for the commercial production of a different variety, shall constitute an infringement of a plant breeder's right ;*

(d) *uses that propagating material for purposes of bona fide research;*

(e) *uses that propagating material for private or non-commercial purposes; or*

(f) *is a farmer who on land occupied by him or her uses harvested material obtained on such land from that propagating material for purposes of propagation: Provided that harvested material obtained from the replanted propagating material shall not be used for purposes of propagation by any person other than that farmer.*

(4) (7) *Notwithstanding the provisions of subsection (3)(b) (6)(b), an ornamental plant in respect of which a plant breeder's right has been granted and any part thereof which is normally sold for purposes other than the multiplication thereof, shall enjoy the protection of such right when it is used commercially as propagating material in the production of such ornamental plant or of a cut flower.*

(5) (8) *A notice in terms of subsection (1A) (2) shall, in any case where the holder of the plant breeder's right in question is a citizen of, or is domiciled in, a convention country or an agreement country or, in the case of a juristic person, has a registered office in a convention country or an agreement country, be issued only if such holder can in terms of the laws of such country obtain corresponding protection in that country."*

Insertion of section 23A in Act 15 of 1976

14. The following section is hereby inserted in the principal Act after section 23:

"Infringement of plant breeder's right

23A. *A plant breeder's right shall be infringed by any person who-*

(a) *not being the holder of the plant breeder's right, performs, or causes to be performed, an act contemplated in section 23(1) without a licence obtained under section 25 or 27;*

(b) *has obtained a licence under section 25 or 27 but fails to comply with any term or condition thereof;*

(c) *uses the approved denomination of a protected variety in relation to plants or propagating material of any other variety for any purpose whatsoever; and*

(d) sells plants or propagating material of a protected variety under any other denomination than the approved denomination of that variety."

Insertion of section 24A in Act 15 of 1976

15. The following section is hereby inserted in the principal Act after section 24:

"Power to enter premises, carry out inspections, take samples and seize certain articles

24A. (1) The registrar, an officer in the department or a person referred to in section 3(3)(a) may, on the authority of a warrant issued under subsection (3), at any reasonable time-

(a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, prepackaged, marked, labelled, held, kept, packed, removed, transported, exhibited or sold;

(b) direct a person in control of or employed at such place, premises or vehicle to-

(i) deliver any book, record or other document that pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;

(ii) furnish such information as he or she has with regard to that plant, propagating material, substance or other article;

(iii) render such assistance as the registrar, officer or person requires to enable him or her to perform his or her functions in terms of this Act;

(c) inspect any book, record or other document and make copies thereof or excerpts therefrom;

(d) seize any plant, propagating material, substance, book, record or other document or article which is or may be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the registrar, officer or person concerned make copies thereof or excerpts therefrom;

(e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, prepackaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyse or classify such samples.

(2) Any sample taken in terms of subsection (1)(l) or (6)-

(a) shall consist of the quantity or mass determined by the registrar, taken in accordance with the methods determined by him or her;

(b) shall be taken in the presence of the person in charge of, or the owner or custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the registrar shall be completed in respect thereof;

(c) shall, if necessary, be packed and identified in such manner as the nature thereof permits; and

(d) shall with all convenient speed be tested, examined or analysed in accordance with the methods which the registrar may determine or which may be prescribed, and the result of such test, examination or analysis shall be entered on the form determined by the registrar.

(3) A warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the vehicle is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) and (b) is upon or in such place, premises or vehicle, and shall specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued.

(4) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant shall be conducted with strict regard to decency and order, including -

(a) a person's right to, respect for and the protection of his or her dignity;

(b) the right of a person to freedom and security; and

(c) the right of a person to his or her personal privacy.

(5) The registrar, officer or person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle;

(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(6) The registrar, an officer in the department or a person referred to in section 3(3)(a) may without a warrant enter any place, premises or vehicle, and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so consents to such entry, search, seizure, taking of samples and removal.

(7)(a) The registrar, officer or person who may on the authority of a warrant issued in terms of subsection (3) enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly demanded admission to the place, premises or vehicle and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.

(8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

(9) A warrant issued in terms of this section may be issued on any day and shall be of force until-

(a) it is executed; or

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or

(c) the expiry of one month from the day of its issue; or

(d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.

(10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document shall be returned to the person from whom it was seized."

Amendment of section 25 of Act 15 of 1976, as amended by section 16 of Act 5 of 1980

16. Section 25 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

*"(3) The holder of a plant breeder's right shall within the prescribed period notify the registrar in **such form and the prescribed manner as may be prescribed** of each licence issued by him or her under this section, and shall furnish the registrar with a copy of each such licence.*

*(4) During the period which the Minister prescribes under section 23 (2) (5) as a period for the exercise of sole rights in respect of the kind of plant to which a **new** variety belongs, the registrar shall not issue a compulsory licence in respect of that variety in terms of section 27."*

Amendment of section 27 of Act 15 of 1976

17. Section 27 of the principal Act is hereby amended by the substitution in subsection (3) for the

words preceding paragraph (a) of the following words:

"If the registrar is satisfied that the holder of a plant breeder's right is unreasonably refusing a licence under section 25 or imposing unreasonable conditions for the issue thereof, and is satisfied that, as a result of such refusal or such conditions, the reasonable requirements of the public with regard to the *new* variety in question are not being satisfied or will not be satisfied, he *or she* may issue a compulsory licence-".

Amendment of section 29 of Act 15 of 1976

18. Section 29 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words receding paragraph (a) of the following words:

"The holder of a plant breeder's right under this Act or the Plant Breeders' Rights Act, 1964 (Act No. 22 of 1964), shall, within the prescribed period after such right or any part thereof has been transferred to another person *and* in the *form and prescribed* manner *prescribed* and upon payment of the prescribed fee-"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) A person to whom a plant breeder's right or any part thereof has been transferred shall, if he *or she* appoints an agent with respect to such right, within the prescribed period and in the *form and prescribed* manner *prescribed* inform the registrar of the name and address of such agent."

Amendment of section 31 of Act 15 of 1976, as amended by section 19 of Act 5 of 1980

19. Section 31 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) The Minister may after consultation with the Minister of Finance by notice in the Gazette take over on behalf of the State the plant breeder's right in any *new* variety of a kind of plant from a date determined by him *or her* and published in the same or later notice in the Gazette."

Amendment of section 32 of Act 15 of 1976, as amended by section 20 of Act 5 of 1980

20. Section 32 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The denomination approved in respect of a *new* variety may be altered or supplemented by the registrar- "; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) An application referred to in subsection (1)(b) shall be made to the registrar in the *form and prescribed* manner *prescribed* and shall be accompanied by the prescribed application fee."

Amendment of section 33 of Act 15 of 1976, as amended by section 21 of Act 5 of 1980

21. Section 33 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) A plant breeder's right shall terminate upon the expiry of the *relevant period prescribed in respect thereof under contemplated in section 21.*

(2) The registrar may terminate a plant breeder's right prior to the *termination contemplated in subsection (1), if he is satisfied expiry of the plant breeder's right if-*

(a) *that* any information submitted to him *or her* in the application for such a right or in connection with such an application, was incorrect and *that if* such a right would not have been granted if he or *or she* had known that the information was incorrect;

(b) *that* information has come to light which, if discovered earlier, would have resulted in the *plant breeder's* right being refused;

(c) *that* priority should be given under section 8 to any other application for the grant of a plant breeder's right in the same variety;

(d) *that* the holder of the *plant breeder's* right refuses or has failed or is not in a position to furnish the registrar with propagating material of the relevant variety which conforms to the requirements of paragraph (a) of section 24(1);

(e) *that* the holder of the *plant breeder's* right has failed to comply with any request under paragraph (b) of section 24(1), or *that* he *or she* has prevented the registrar from undertaking an inspection referred to in section 24(2);

(f) *that* the holder of the *plant breeder's* right refuses or has failed or is not in a position to submit a proposal for an alteration or a supplementation of a denomination after having been requested to do so under section 32 (3);

(g) *that* the annual fee *under in terms of* section 22 was not paid within the *time period* referred to in that section;

(h) *the plant breeder's right has been granted to a person who is not entitled thereto, unless it is transferred to the person who is entitled thereto; or*

(i) *the holder of the plant breeder's right is ordered to terminate the plant breeder's right by an order of court."*

Amendment of section 40 of Act 15 of 1976, as substituted by section 5 of Act 38 of 1983

22. The following section is hereby substituted for section 40 of the principal Act:

"Secrecy

40.(1) No person shall, except-

(a) *for the purpose of carrying out his duties or the performance of his functions under in so far as it is necessary for the proper application of the provisions of this Act; or*

(b) *for the purpose purposes of legal proceedings under this Act or any other law; or*

(c) *when required to do so by any court or under any law; or*

(d) *when authorized thereto by the Minister,*

disclose any information acquired by him or her in the carrying out of his duties or the performance of his functions under this Act in relation to any new variety for which an application for the grant of a plant breeder's right has been made or in respect of which such right has been granted, or in relation to the business affairs of an applicant or the holder of such right exercising of his or her powers or the performance of his or her duties in terms of this Act.

(2) Notwithstanding the provisions of subsection (1), the registrar may furnish to the holder of a plant breeder's right or to the person to whom a licence was granted under section 25, any information he or she has acquired pertaining to any action which constitutes an infringement of the plant breeder's right in question."

Amendment of section 42 of Act 15 of 1976

23. Section 42 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) The provisions of sections 18(1), (3), (4) and (5) shall mutatis mutandis apply with reference to an appeal An appeal under subsection (1) shall be heard on the date and at the time and place fixed by the chairperson and he or she shall advise the person appealing and any other party that has an interest in the appeal, in writing thereof.

(b) The chairperson may, for the purposes of the hearing of an appeal-

(i) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the registrar may retain for examination any document so produced;

(ii) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(iii) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(c) The procedure at the hearing of an appeal shall be as prescribed.

(b) (d) The person appealing and the registrar shall be entitled to be represented at an appeal by an advocate or an attorney or by a patent agent registered under section 89 of the Patents Act, 1952 (Act

37 of 1952) section 20 of the Patents Act, 1978 (Act No. 57 of 1978)."

Repeal of section 43 of Act 15 of 1976

24. Section 43 of the principal Act is hereby repealed.

Amendment of section 44 of Act 15 of 1976

25. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The regulations may in respect of any contravention thereof or failure to comply therewith prescribe a penalty *not exceeding a fine of two hundred rand or imprisonment for a period not exceeding six months* -

(a) in the case of a first conviction, of a fine or imprisonment for a period not exceeding six months; and

(b) in the case of a second or subsequent conviction, of a fine or imprisonment for a period not exceeding one year."

Amendment of section 45 of Act 15 of 1976

26. Section 45 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

"(b) who *for the purpose of deceiving the registrar or any officer in the administration of any provision of this Act, or who, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder* makes a false statement or representation, *or who furnishes false information, knowing it to be false;*

(c) who obstructs or hinders the registrar, *or any an officer or a person referred to in section 3(3)(a) in the exercise of his or her powers or the carrying out of his functions or her duties under this Act;"*

(b) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

"(h) who fails to comply with an undertaking referred to in paragraph (b) of section 14(2) *or fails to carry out an order referred to in section 24A(1)(b);"*

(c) by the substitution for paragraphs (i) and (ii) of subsection (1) of the following paragraphs, respectively:

(i) in the case of a *contravention first conviction of an offence* referred to in paragraph (a) or (b) to a fine *not exceeding one thousand rand* or to imprisonment for a period not exceeding two years *or to both such fine and such imprisonment; or ;*

(ii) in the case of a *contravention second or subsequent conviction of an offence* referred to in

paragraph (c), (d), (e), (f), (g), (h) or (i) (a) or (b) to a fine or to imprisonment for a period not exceeding *one year four years or to both such fine and such imprisonment* ;"; and

(d) by the addition to subsection (1) of the following paragraphs:

"(iii) in the case of a first conviction of an offence referred to in paragraph (c), (d), (e), (f), (g), (h) or (i) to a fine or to imprisonment for a period not exceeding one year; or

(iv) in the case of a second or subsequent conviction of an offence referred to in paragraph (c), (d), (e), (f), (g), (h) or (i) to a fine or to imprisonment for a period not exceeding two years."

Amendment of section 46 of Act 15 of 1976

27. Section 46 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

*"The registrar, or an officer who under the delegation, control or direction of the registrar exercises the powers **performs the functions** and carries out the duties assigned to or imposed upon the registrar under this Act, shall be guilty of an offence and liable on conviction to a fine **not exceeding five hundred rand** or to imprisonment for a period not exceeding one year- "*; and

(b) by the substitution for subsection (4) of the following subsection:

*"(4) Nothing in this section contained shall apply to the **breeder of a new person who bred, or discovered and developed**, a variety of a plant or to any acquisition by **bequest or devolution in law inheritance**."*

Amendment of section 47 of Act 15 of 1976

28. Section 47 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

*"(1) The holder of a plant breeder's right may upon proof of an infringement of that right and without proof of damages which might arise from such infringement, recover by action in any competent court from the person who infringed the *plant breeder's* right compensation in respect of such infringement in an amount not exceeding **five hundred rand R10 000**."; and*

(b) by the addition of the following subsections:

"(4) The holder of a plant breeder's rights or any person to whom a licence has been granted under section 25 or 27 may institute a claim for damages suffered by such holder or such person due to the infringement of that plant breeder's right.

(5) In the case of proceedings referred to in subsection (4) instituted by a person to whom a licence has been granted under section 25 or 27, the holder of the relevant plant breeder's right shall be joined as a party to those proceedings.

(6) *In addition to any other remedy, a competent court may, in proceedings due to the infringement of a plant breeder's right, make an order in respect of the custody, surrender or disposal of any book, document, plant, propagating material, product, substance or other article.*"

Repeal of section 50 of Act 15 of 1976

29. Section 50 of the principal Act is hereby repealed.

Substitution of long title of Act 15 of 1976

30. The following long title is hereby substituted for the long title of the principal Act:

"ACT

To provide for a system whereunder *plant breeders'* rights relating to *new* varieties of certain kinds of plants may be granted and registered; *for the requirements which have to be complied with for the grant of such rights*; for the protection of such rights and the grant of licences in respect of the exercise thereof; and to provide for incidental matters."

Repeal of laws

31. The laws mentioned in the second column of the Schedule are hereby repealed as indicated in the third column of the Schedule, to the extent that such laws were in force immediately prior to the commencement of the Constitution in the various territories of the national territory of the Republic as set out in the fourth column of the Schedule.

Extension of application of Act 15 of 1976

32. The principal Act shall apply throughout the Republic.

Short title

33. This Act shall be called the *Plant Breeders' Rights Amendment Act, 1996*.

SCHEDULE

LAWS REPEALED BY SECTION 30

Number and year of Short title Extent of repeal Area in respect of law which law is repealed -

Act No. 22 of 1964 Plant Breeders' The whole The territory of the Rights Act, 1964 former Republic of Transkei

Act No. 72 of 1969 Plant Breeders' The whole The territory of the Rights Amendment former Republic of Act, 1969 Transkei

Act No. 15 of 1976 Plant Breeders' The whole The territories of Rights Act, 1976 the former Republics of Bophuthatswana, Venda and Ciskei and the territories of the former self-governing

territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane

Act No. 5 of 1980 Plant Breeders' Rights Amendment former Republic of Act, 1980 Ciskei and the territories of the former self-gov-erning territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane

Act No. 14 of 1981 Plant Breeders' Rights Amendment former Republic of Act, 1981 Ciskei and the territories of the former self-gov-erning territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane

Act No. 38 of 1983 Plant Breeders' Rights Amendment the former Act, 1983 self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane