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FINLAND

The Act on Plant Breeder's Right (N:o 789/1992, 21.8.1992) as amended* on Amendments to the Act on Plant Breeder's Right (N:o 238/1999, 5.3.1999)

Consolidated Text of the Act on Plant Breeder's Right

CHAPTER I:

GENERAL PROVISIONS

Section 1

Breeders' Rights

The breeder of a plant variety or the person to whom his right has been transferred (owner of the variety) may, by application for registration, obtain the exclusive right afforded by this Law to exploit the variety.

CHAPTER II:

CONDITIONS FOR PROTECTION

Section 3

Conditions in Respect of the Breeder

Plant breeder's right to a variety may be granted to

- (1) a person who has bred the variety in Finland;
- (2) a person who is a national of a member state of the UPOV organization established to protect new plant varieties, referred to as Association below;
- (3) a breeder who has registered offices in the territory of a member of the Association;
- (4) a breeder who is a national of a member of the World Trade Organization, referred to as Organization below;
- (5) a breeder who has a registered offices within the territory a member of the Organization;
- (6) a person to whom the right granted on the basis of points 1-5 has been transferred.

The provisions laid down in paragraph 1 above also concern an applicant of plant breeder's right who has discovered and developed a plant variety as well as his successor in title.

Notwithstanding the provisions of paragraph

- (1) breeders' rights may also be granted in other cases if the Ministry of Agriculture and Forestry deems it justified in view of Finnish plant breeding or the import of the plant variety.

Section 4

Conditions for Protection

Plant breeder's right may only be granted for a variety

- (1) that can be clearly distinguishable from other varieties whose existence is a matter of common knowledge at the time of the filing of the application or where relevant, at the priority date;
- (2) which is sufficiently homogenous and
- (3) the essential characteristics of which are stable when the variety is reproduced in the manner proposed by the breeder.

* Sections 2 and 8 of the Act on Plant Breeder's Right of August 21 1992 (789/1992) shall be abrogated, section 3, paragraph 1, section 4, point 1, introduction to section 5 and point 1, section 6 and 12, section 18, paragraph 1, section 21, title to chapter 5, section 23, paragraph 1, section 27, paragraph 1 and section 28 shall be amended, and a new paragraph 2 shall be added to section 3, by which the present paragraph 2 becomes paragraph 3, and new sections 6 a-6 e, 22 a, 31 a and 34 a shall be added to the act as follows;

Section 5

Novelty

Plant breeder's right may not be granted if propagating or harvested material of the variety has been sold or disposed in other way by or with the consent of the breeder for purposes of exploitation of the variety

- (1) in the territory of this country for longer than one year before filing the application or where relevant at the priority date;
- (2) abroad for longer than six years before the application was filed in the case of a vine, fruit tree, forest tree, ornamental tree or the rootstock thereof;
- (3) abroad for longer than four years when the variety in question is a plant other than one referred to in item (2).

CHAPTER III

SCOPE OF PROTECTION

Section 6

Scope of Protection

Other than the owner of the variety may not without the consent of the holder:

- (1) produce propagation material of the variety;
- (2) condition for the purposes of propagation;
- (3) offer propagation material of the variety for sale;
- (4) sell or otherwise market propagation material of the variety;
- (5) export propagation material of the variety from Finland;
- (6) import propagation material of the variety to Finland ; and
- (7) stock propagation material of the variety for any of the purposes mentioned in (1) to (6), above.

The acts referred to in paragraph 1 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in the relation to the said propagating material.

Section 6 a

Extent of the plant breeder's right

The provisions of section 6 shall also apply in relation to

- (1) plants, which are not clearly distinguishable from the protected varieties;
- (2) variety, which is essentially derived from the protected variety (essentially derived variety), where the protected variety is not itself an essentially derived variety; and
- (3) variety whose production requires the repeated use of the protected variety (hybrids).

Section 6 b

Exceptions to the plant breeder's right

Plant breeder's right does not restrict the utilization of the variety

- (1) privately for other than commercial purposes;
- (2) for experimental purposes;

(3) in acts done for the purpose of breeding or to discover and develop other varieties.

Subject to conditions laid down in section 6 c below, farmers are entitled to use seeds of varieties they have produced for sowing on their own farm.

Section 6 c

Right for a protected variety and obligation concerning the remuneration for this

Farmers may against remuneration use the crop of varieties covered by the legal protection referred to in this act for propagation purposes on their own farm, except for hybrids. This right concerns the propagation of the varieties belonging to the following plant species only: oats, barley, rye, wheat, rye-wheat, turnip rape, rape, oil flax, pea, broad bean, potato and buckwheat.

The level of remuneration shall be sensibly lower than the amount charged for the licensed production of propagating material. The level of the equitable remuneration to be paid to the owner may form the object of a contract between the owner and the farmer concerned or organizations representing them. Where such contract has not been concluded or does not apply, the remuneration to be paid shall be 50 % of the amounts charged for the licensed production of propagating material.

Farmers who do not grow plants on an area bigger than 10 ha may use propagation material of a protected variety in a way referred to in paragraph 1 without remuneration. However in the case of cultivation of a protected potato variety a remuneration must be paid if the area under the variety in question is more than 2 ha or in the case of early varieties cultivated under cover more than 1 ha.

Section 6 d

Obligation to provide cultivation data on the variety

Farmers and processors of propagation material are obliged to provide the necessary data to the authorities and the holder of the variety upon request in order to establish the payment obligation.

Section 6 e

Exhaustion of the plant breeder's right

The plant breeder's right shall not extend to acts concerning any material of the protected variety or of plants covered by the provisions of section 6 a, which has been sold or otherwise marketed by the owner or with his consent in any of the countries belonging to the European free trade area, unless such acts

- (1) involve further propagation of the variety in question; or
- (2) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

For the purposes of paragraph 1, material means, in relation to a variety

- (1) propagating material of any kind;

- (2) harvested material, including entire plants and parts of plants; and
- (3) any product made directly from the harvested material.

Section 7

Ornamental Plants

Breeders' rights shall also extend to the seedlings of ornamental plants or the parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

CHAPTER IV

APPLICATION FOR REGISTRATION AND ITS CONSIDERATION

Section 9

Register Authority

The register authority is the Plant Variety Board, which shall maintain the plant variety register.

The Plant Variety Board shall be appointed by the Ministry of Agriculture and Forestry. The Board shall have a chairman, a deputy chairman and at most ten members. Each member shall have an alternate. The Board shall be appointed for a term of three years at a time. Further provisions on the Board shall be laid down by Decree.

Section 10

Application

Applications for breeders' rights shall be made in writing to the register authority.

The application shall contain a description of how the variety in question differs from other varieties, and a variety denomination. The application shall state the name of the breeder. If a person other than the breeder of the variety applies for the breeders' rights, such applicant shall demonstrate his right to the variety. The applicant shall state that the variety has not, before the application was filed, been offered for sale or marketed in the manner referred to in Section 5.

The applicant shall pay the application fee.

The date on which the application documents have been furnished to the authority and the application fee has been paid shall be entered as the date of application.

Section 11

Variety Denomination

The variety denomination must enable the variety to be identified. A denomination shall not be accepted for a variety:

- (1) if it consist solely of figures, except where this is an established practise for designating the varieties in question;
- (2) if it is liable to mislead the public;
- (3) if it is against the law, public policy or morality;
- (4) if it is liable to cause confusion with the denomination of a variety that belongs to the same or to a closely related plant species that has been entered or proposed for entry in the official register of varieties or that is used for reproductive material of such a variety;
- (5) if it is liable to cause confusion with a trademark, name, company name or other identifying mark that a person other than the applicant has protected and that would be a bar to the registration of the variety name as a trademark of the reproductive material of the plant variety or of similar products;
- (6) if it is liable to cause confusion with the trademark of plant variety material or of similar products that the applicant has protected.

Section 12

Period of priority

If the owner of the variety has previously applied for plant breeder's right within the territory of a member of the Association, the application, if it is filed within twelve months of the filing of the earlier application (the period of priority), shall be deemed at the request of the applicant to have been filed in Finland at the same time.

Section 13

Supplementing the Application

If the applicant has not followed the provisions and instructions issued on the filing of the application or if there is another reason why the application cannot be considered, the applicant shall be invited by an interim decision to make a statement or to supplement the application.

If the applicant has not made a statement or supplemented the application to remedy the defect within the specified period, the application shall be rejected. This consequence shall be mentioned in the interim decision.

A rejected application shall be reconsidered if, within one month of the end of the term specified in the interim decision, the applicant so requests or undertakes to supplement the application and, within the same period, pays the reapplication fee.

Section 14

Rejection of the Application

If the application cannot be approved even after the applicant has made a statement or supplemented the application, the application shall be rejected, unless there is cause to issue the applicant a new interim decision.

Section 15

Claim to a Better Right

If a person claims to the register authority that he has a better right to the variety than the applicant and the matter is in doubt, the authority shall invite him in an interim decision to institute an action in court within the period determined by the authority. If the claim is not filed within that period, the claim shall be disregarded in the consideration of the application and that fact shall be mentioned in the interim decision.

If the issue of a better right is under consideration by the court, the consideration of the application may be postponed until the issue has been decided on a final basis.

Section 16

Transfer of the Application

If a person demonstrates to the register authority that he has a better right to the variety than the applicant, the register authority shall transfer the application to his name if he so requests. The person to whom the application is transferred shall pay a new application fee.

Until a decision is finally made on the request for transfer, the application may not be withdrawn, rejected or approved.

Section 17

Publication of the Application

If the application meets the requirements, the register authority shall, through publication of the application, provide the public with an opportunity to file claims regarding application.

Claims regarding the application shall be filed in writing with the register authority within the period determined by it.

Section 18

Examination of the variety

The register authority must make sure that the variety is examined, unless this is considered unnecessary for special reasons.

The applicant shall supply the necessary plant material and the necessary information to the entity carrying out the examination.

The applicant who has requested priority on the basis of an application filed in another country shall have four years from the end of the period of priority to supply the plant material and the necessary data.

Section 19

Decision on the Application

After the period provided for the filing of claims has ended and the necessary examination of the variety has been carried out, the application shall be subjected to continued consideration and the register authority shall decide on the registration of the variety.

The applicant shall be given the opportunity to make a statement on the comments that have been made and the examination that has been carried out.

Section 20

Registration of the Breeders' rights

After the decision of the register authority referred to in Section 19 is no longer subject to ordinary channels of appeal, the variety shall be entered in the plant variety register. The registration shall be published. The applicant shall be given a certificate of registration.

A decision on the rejection of an application shall be published after it is no longer subject to ordinary channels of appeal.

CHAPTER V

PERIOD OF PROTECTION OF THE PLANT BREEDER'S RIGHT AS WELL AS USE AND CHANGING OF THE VARIETY DENOMINATION

Section 21

Period of validity

Plant breeder's right shall be valid from the date on which the register authority has taken its decision on the approval of the variety for registration. The plant breeder's right may be maintained through payment of an annual fee for 25 years, in the case of potatoes, trees and vines for 30 years, from the beginning of the year following the taking of the decision.

Section 22

Use of the Variety Denomination

When reproductive or vegetative propagating material of a registered plant variety is offered for sale, its registered denomination shall be used even after the period of protection has ended or the breeders' rights have otherwise ended.

The registered variety denomination or a denomination that is easily confused with it may not be used for a variety belonging to the same species or to a closely related species or for the reproductive or vegetative propagating material of such a variety as long as the variety denomination is registered.

Section 22 a

Canceling and changing the variety denomination

The register authority must cancel the registered denomination of the variety

- (1) if the denomination of the variety has been registered in violation of this act and the obstacle for the registration still exists;
- (2) if the holder demands this and shows legal grounds for it; or
- (3) if the holder or another person presents a decision by a court in which the use of the denomination of the variety is prohibited.

The registration authority must notify the owner on the demand concerning canceling the denomination and request the owner to propose another denomination within 30 days from receiving the notice on the demand. If the variety is no longer protected, the register authority may propose a new denomination.

A proposal concerning a new denomination must be examined and published as laid down in the Decree on Plant Breeder's Rights (907/1992). The new denomination must be registered and published after approval. The earlier name must be cancelled at the same time.

CHAPTER VI

LICENSES, COMPULSORY LICENSES AND NOTATIONS IN THE REGISTER

Section 23

License

If the owner of the variety has granted permission to another person to use the registered variety (license), such other person may transfer his right to a third person only if agreed.

If the license belongs to a company, it may be transferred in connection with the transfer of the company, unless otherwise agreed.

Section 24

Compulsory Licenses

If the reproductive or vegetative propagating material of a registered variety is not placed on the market under reasonable conditions and to a sufficient extent in view of the food economy or other public interest, a person who wishes to exploit the variety in Finland on a professional basis may obtain a compulsory license to do so, unless the owner of the variety has an acceptable reason for his actions. The compulsory license shall also include the right to receive a sufficient quantity of reproductive or vegetative propagating material of the variety from the owner of the variety.

A compulsory license may be granted only to a person who is deemed to have the prerequisites for exploiting, in an acceptable manner and under the conditions determined in the compulsory license, the variety that is the subject of the breeders' rights.

The compulsory license shall not prevent the owner of the variety from himself using his right or from granting a license to the variety.

The compulsory license shall be granted by the court, which shall order to what extent the registered variety may be used and determine the remuneration as well as the other conditions of the compulsory license. The court may, at the request of the owner of the variety, withdraw the compulsory license or determine new conditions if required by essential changes in the circumstances.

Section 25

Notations in the Register

When the breeders' rights have been transferred to another or when a license has been granted to another, a notation thereof shall be made in the plant variety register if so requested. The same shall apply to a lien on the breeders' rights. However, the granting of a compulsory license shall always be noted in the register.

If it is shown that the license, lien or compulsory license entered in the register is no longer in force, the notation shall be deleted from the register.

A fee shall be paid for the entry of the notation in the register.

The person who has most recently been entered in the register as the owner of the variety shall be considered the owner of the variety.

CHAPTER VII

TERMINATION OF THE BREEDERS' RIGHTS

Section 26

Renunciation of the Breeders' Rights

The owner of the variety may renounce his right by notifying the register authority thereof in writing, in which case the authority shall delete the variety from the register.

The breeders' rights shall end if the annual fee is not paid within the prescribed period.

Section 27

Nullity of the Rights Protected

The court shall declare the plant breeder's right null and void when it is established at the date of filing of the application or, where relevant, at the date of priority:

- (1) that the variety was not distinct or not new;
- (2) that, where the grant of the plant breeder's right has been essentially based upon information and documents submitted by the applicant, the variety was not uniform or stable at the same date; or

- (3) that the Community plant variety right is granted for the variety in question; or
- (4) the registered holder of the plant variety is a person who is not entitled to this and it has not been demonstrated to the register authority that a person other than the applicant has a better right to the variety.

The court shall ask the register authority for a statement in cases that concern a declaration of nullity of the plant breeders' rights.

In other cases pertaining to the right of the breeder, the court may ask the register authority for a statement if there is reason for this.

Section 28

Forfeiture of the Rights Protected

The register authority may declare the plant breeder's rights forfeit if

- (1) the owner of the variety is not in a position to produce reproductive or vegetative propagating material of the variety with its characteristics as defined when the protection was granted; or
- (2) the owner of the variety does not, after being requested to do so by the register authority, provide reproductive or vegetative propagating material of the variety, the documents and other information deemed necessary for checking that the variety is maintained appropriately or if the owner of the variety does not allow inspection of the measures which have been taken for the maintenance of the variety; or
- (3) the denomination of the variety has been cancelled after the right was granted and the owner of the variety has not proposed another acceptable denomination for the variety.

CHAPTER VIII

PROTECTION UNDER PRIVATE LAW

Section 29

Prevention of Infringements

If anyone infringes the exclusive right under the breeders' rights, the court may prohibit him from continuing or renewing the act.

Section 30

Action for a Declaratory Judgment

The owner of the variety or the person who, on the basis of license or compulsory license, has the right to exploit the plant variety protected by the breeders' rights may institute a declaratory action to establish whether, on the basis of the breeders' rights that have been granted to him, he enjoys protection against others, if there is uncertainty regarding this matter and this uncertainty is to his detriment.

A person who exploits or intends to exploit a plant variety that is subject to the protection granted on the basis of the breeders' rights may, under the same conditions, institute a declaratory action against the holder of the breeders' rights to determine whether the granting of the breeders' rights constitutes a bar to such activity.

Section 31

Damages

A person who infringes the breeders' rights or the provisions of Section 22 on the exploitation of the variety denomination, deliberately or negligently, shall be required to pay damages for the exploitation of the variety and to compensate any other loss caused by the infringement. If the negligence is slight, the amount of the damages may be adjusted.

If the infringement of the breeders' rights or the infringement of the provisions of Section 22 on the exploitation of the variety denomination is not deliberate or negligent, the infringer shall be required to pay damages only to the extent deemed reasonable.

Compensation for infringement of the breeders' rights or for an infringement of the provisions of Section 22 on the exploitation of the variety denomination may be claimed only for the five years preceding the institution of the action for damages.

If the breeders' rights have been declared null and void by a court decision that is no longer subject to ordinary channels of appeal, no claim for damages may be brought and no punishment may be pronounced.

In addition to the provisions of this Section on compensation, the provisions of the Damages Act (1974/412) shall apply as appropriate.

Section 31 a

Farmers' obligation to damage in certain cases

A farmer who neglects the obligation laid down in section 6 c is obliged to pay damage for this. The amount of remuneration is determined according to the provisions concerning Community Plant Variety Rights.

Section 32

Return of Reproductive or Vegetative Propagating Material

On application by the person that has suffered an infringement of his rights, the court may order, as it deems reasonable, that the reproductive or vegetative propagating material of the variety that is the subject of the infringement of rights shall be transferred to the infringed person in return for compensation. This shall not apply to a person who has received the reproductive or vegetative propagating material in good faith or who has a special right thereto and has not himself infringed the breeders' rights.

The reproductive or vegetative propagating material referred to in the first paragraph above may be confiscated if the person that has suffered an infringement of his rights has requested transfer of the reproductive or vegetative propagating material as provided in Chapter VII of the Execution Act.

Section 33

Interim Protection

If, after the application referred to in Section 10 has been filed, a person other than the applicant uses on a professional basis the variety that is the subject of the application for breeders' rights, the provisions on infringement of breeders' rights shall apply correspondingly if the rights are subsequently granted.

The penalty referred to in Chapter IX of this Law may not be imposed for acts that took place after the application referred to in Section 10 was filed if, although they infringe the breeders' rights, they took place before the breeders' rights had been granted. Damages for an act that took place before publication of the application referred to in Section 17 may be ordered only in accordance with Section 31, second paragraph.

If the action for damages is brought within a year of the granting of the breeders' rights, the provisions in Section 31, third paragraph, shall not apply.

CHAPTER IX

PENAL PROVISIONS

Section 34

Infringement of Breeders' Rights

A person who deliberately infringes the exclusive right referred to in Sections 6, 7 or 8 shall be sentenced for infringement of breeders' rights to a fine or imprisonment of at most six months.

The public prosecutor may not bring charges for an offence unless the injured party has reported the offence for prosecution.

Section 34 a

Failure to comply with the obligation to provide cultivation data on a variety

A farmer or processor who deliberately or negligently neglects the obligation laid down in Section 6 d shall be sentenced for the failure to comply with the obligation to provide the said data to fine.

Section 35

Misuse of a Variety Denomination

A person who deliberately or negligently infringes the provisions of Section 22 on the use of a variety denomination shall be sentenced, unless the offence is petty, for misuse of a variety denomination to a fine.

CHAPTER X

MISCELLANEOUS PROVISIONS

Section 36

Use of a Agent

If the applicant or the holder of the breeders' rights does not reside in Finland, he shall have an agent in Finland authorized to represent him in all matters pertaining to the breeders' rights and to applications for such rights.

Section 37

Appeal

The final decision of the register authority on the breeders' rights shall be subject to appeal by the applicant or the holder of the breeders' rights, if the decision goes against them. A person that had lodged a claim against the application may appeal a decision approving the application despite the proper lodging of the claim against such application. If the person that had entered an appeal withdraws his appeal, the appeal may nonetheless be considered if there are special reasons.

The applicant may appeal a decision by which a request referred to in Section 16 for the transfer of an application has been approved. The person presenting the claim for transfer of an application may appeal a decision rejecting his request.

The decision of the register authority shall be subject to appeal before the Supreme Administrative Court. Appeal shall be filed within 60 days of the date on which service of the decision was made.

Section 38

Forum

The forum for cases dealt with under this Law is the City Court of Helsinki.

Section 39

Fees

The amount of the fees referred to in this Law shall correspond to the total costs for the State of providing the services (cost price). However, the amount of the registration fee and the annual fee may be determined so that the total amount collected from these is estimated to correspond to the total costs incurred by the State in maintaining the register.

Fees of equal size may be required for similar services by the Plant Variety Board even when the costs incurred by the state in providing the services differ. In determining the amount of such a fixed fee, the average total costs of the service shall be taken in consideration.

The fees may be set in general at an amount that is above or below the cost price or the fee calculated in accordance with the second sentence of the first paragraph or may be waived entirely, if this is due to international agreements, reasons of trade policy or practical reasons. In other respects, the provisions of the State Cost Assessment Act (150/92) shall apply to the fees.

Section 40

Supplementary Provisions

Further provisions on the implementation of this Law shall be issued by Decree. The Plant Variety Board may issue further regulations on the registration of applications and their examination.

This act {Act on Amendments on Plant Breeder's Right (N:o 238, 5.3.1999)} shall enter into force 15th March 1999.

This act shall also be applied in the case of varieties registered upon its entry into force or that are registered on the basis of applications submitted before this act enters into force, unless otherwise provided below.

An application which has been published prior to the entry into force of this act must be considered and decided according to provisions in force upon the entry into force of this act.

This act shall not apply to measures taken or contracts made prior to its entry into force.

The provision laid down in section 6 e, paragraph 1, point 2 does not concern plant material that has been put in the market prior to the entry into force of this act.

A matter concerning the cancellation of a variety registered prior to the entry into force of this act must be settled according to provisions in force upon the entry into force of this act.

A person who before the entry into force of this act has started to use plant material in a way that on the basis of the earlier act did not require the consent of the holder of the right may continue the planned activity in the necessary and regular extent for no more than five years from the entry into force of this act. A person who has made essential preparations for the exploitation of a variety has the same right.

A farmer who upon the entry into force of this act has used the seeds of a protected variety in a way referred to in section 6 c may continue the utilization of these without any obligation to pay remuneration referred to in the said section for no more than two growing seasons following the entry into force of this act.

In the application concerns a variety belonging to a species for which right could not be granted according to the earlier legislation and the application is submitted within a year from the entry into force of this act, the time laid down in section 5 is four years instead of one.