



## Brown-bag sales of PVP-protected seed was **made illegal** in the United States in 1994

### In 1970

#### **Congress passed the Plant Variety Protection Act (PVPA) for protection of plant breeder's right**

Provided legal intellectual property rights protection to breeders of new varieties of plants which are sexually reproduced (by seed).

### In 1994

#### **The U.S. Supreme Court heard arguments in the case of *Asgrow Seed C. v. Winterboer* (Argued on Nov 7, 1994; decided Jan 18, 1995)**

Allowed for the farmer to save and resell seed to other farmers (Continue *brown-bag seed sales*) but only in the amount the seller would need to replant in his own fields. Court of Appeals reversed, allowing farmer to sell up to half of every crop he produces.

### Also in 1994

#### **US Congress passed Public Law No: 103-349 Oct 6, 1994**

"Removes a provision that declares that it is not an infringement for a person whose primary farming occupation is the growing of crops for sale other than reproductive purposes to sell saved seed for reproductive purposes"

In the past, growers of legally purchased seed were able to replant seed and sell seed to their neighbor (known as ***brown-bag seed sales***).

This 1994 Supreme Court decision was only good for this case because Congress was working on a law that would ban ***brown-bag seed sales***.

The PVP Act was amended in 1994 to reflect the ~~brown-bag ban~~

Growers of PVP protected seed can no longer conduct ***brown-bag seed sales***.

***Brown-bag seed sales*** of PVP Title V seed violate both certificate owner rights, and the federal and state seed laws. Fines can be extended to the conditioner, seller, buyer or anyone who assists in the unauthorized sale of protected varieties.

Farmer is restricted to only replanting seed in

In 1862, The Morrill Act, an Act of the U.S. Congress, provided grants of land to states to finance the establishment of colleges specializing in "agriculture and the mechanic arts." Named for its sponsor, Vermont Congressman Justin Smith Morrill (1810–98), it granted each state 30,000 acres (12,140 hectares) for each of its congressional seats.



## When is it illegal to replant **PVP protected** seed?

### When the PVP seed contains other intellectual property (IP) protection...

and the owner of that additional protection has not provided you with legal permission to replant seed.

An example of additional IP protection is the BASF utility patents for the Clearfield wheat varieties that make these cultivars tolerant to *imi* herbicides. These patented genetics are bred into stable plant varieties by university breeders, yet the traits are still owned by BASF.

### When the grower has signed an agreement with the seed owner...

and the agreement specifically prohibits replanting seed. These terms may appear in an agreement referred to as the Stewardship Agreement, Material Transfer Agreement, Testing and Development Agreement, or other title.

Not knowing that there is a signed agreement is not defensible. Legal obligations extend to sub-contractors for growers, and any other agent or employee.

**If you are unsure** of the legal obligations,  
**contact the grower** who has signed the

**Time limit PVP enforcement:** “No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action”. (US Code, Title 7, Chapter 57, Sec. 2566.)

**Time limit on Plant Patent enforcement:** The owner of the Plant Patent may seek damages from infringers throughout the lifetime of the patent. (US Code, Title 35, Chapter 161.)