

Law No. 63
of October 5, 2012
amending articles of Law No. 23 of 1997
on Standards for the Protection of New Varieties of Plants

THE NATIONAL ASSEMBLY
DECREES THE FOLLOWING

Article 1. Article 232 of Law No. 23 of 1997 provides as follows:

Article 232 Definitions

For the purposes of this Law, the following terms and definitions shall apply:

Breeder

Natural or legal person who breeds or discovers and develops a plant variety, an employer of such a person, if applicable law so provides, or who has commissioned the work, or the assignee of the aforementioned persons, as the case may be.

Council for the Protection of Plant Varieties

An advisory body composed of the various bodies and associations interested in the protection of plant varieties. It is chaired by the Minister of Agricultural Development.

Faculty of Agriculture in the University of Panama

State university institution empowered to conduct technical analyses to determine whether a variety meets the conditions laid down in this Law for its registration and the granting of plant breeders' rights in its regard.

General Directorate of the Industrial Property Registry, Ministry of Commerce and Industry (DIGERPI)

State agency responsible for keeping industrial property records of the Republic of Panama. For the purposes of this Law, it shall be responsible for the registration of protected varieties and granting plant breeder's rights.

International Convention for the Protection of New Varieties of Plants (UPOV Convention) of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978 and March 19, 1991

An international convention which may be adhered to by States and certain intergovernmental organizations. Its objective is the protection of plant varieties through an intellectual property right. It serves as the basic text of the **International Union for the Protection of New Varieties of Plants (UPOV)**.

Intergovernmental organization with its headquarters in Geneva, Switzerland, based on the International Convention for the Protection of New Varieties of Plants.

Law

Where written in lower case, a term referring to a document which, in whatever manner, represents, constitutes or grants rights.

National Seeds Commission

National commission established by Decree No. 3 of 1978, composed of representatives government and private bodies. Its purpose is, *inter alia*, quality control of seeds or propagating material used in the country, certification and registration of seeds and compliance with the relevant extant legislation. It is composed of a Technical Secretariat which includes the Seeds Reproduction Unit, the Official Seeds Laboratory and the Certification and Registration Unit.

Panamanian Institute of Agricultural Research (IDIAP)

State agency with legal personality, vested with its own assets and administrative, economic and technical autonomy, responsible for regulating all research, development and application of agricultural science and technology policies in the public sector. It is empowered to perform technical analyses to test whether a variety meets the conditions laid down in this Law for its registration and the granting plant breeders' rights in its regard.

Propagating material

Seeds, fruits, plants, or parts of plants, used in the reproduction of plants. Encompasses the whole plant.

Protected variety

Variety registered in the Register of Protected Varieties, General Directorate of Registration of Industrial Property, Ministry of Commerce and Industry, and subject of a plant breeder's right.

Recognized priority

Precedence for the grant of a breeder's right, based on the submission abroad of an application relating to the same materials which are the subject of a later application in the Republic of Panama.

Reference specimen

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

Registry

Registry of protected varieties kept in the General Directorate of the Industrial Property Registry of the Ministry of Commerce and Industry.

International Union for the Protection of New Varieties of Plants (UPOV). Intergovernmental organization based in Geneva, Switzerland, whose basic text is the International Convention for the Protection of New Varieties of Plants.

Variety a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- 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.

Article 2. Article 233 of Law No. 23 of 1997 provides:

Scope. This Law shall apply to all plant genera and species.

Article 3. Article 234 of Law No. 23 of 1997 provides:

National treatment and reciprocity. The following shall benefit from the rights laid down by this Law:

1. Nationals of the Republic of Panama and all persons domiciled, resident or based therein.
2. Nationals of a UPOV member, as well as natural persons resident in the territory of a UPOV member and legal entities with head offices in said territory. The said nationals, natural persons or legal entities of a member of UPOV shall comply with the conditions and formalities imposed on the nationals of the Republic of Panama.
3. For the purposes of paragraph (2), "nationals" shall mean, where the member of UPOV is a State, the nationals of that State and where the member of UPOV is an intergovernmental organization, the nationals of the States which are members of that organization.
4. Nationals of any State who, without being members of UPOV, grant effective protection to nationals of the Republic of Panama. For the purposes of this section, the Executive Body shall determine whether the protection granted by another State is effective and reciprocal.

Article 4. Article 236 of Law No. 23 of 1997 provides:

Principles. The breeder shall be entitled to apply for a breeder's right.

Where various persons together create and develop a variety, they shall jointly enjoy a right to protection. Unless otherwise stipulated among the breeders, they shall have equal rights.

Where the person who creates or discovers and develops a plant variety is an employee, the right to apply for a breeder's right shall be governed by the

employment contract under which the variety was created or discovered and developed, in accordance with the law applicable to such contracts.

Article 5. Article 237 of Law No. 23 of 1997 states:

Characteristics of the right. The breeder's right shall be transferable and inheritable. The heir or rightful claimant may make use of such right, derive benefits therefrom and dispose of it during its period of validity in the same manner and subject to the same conditions as the predecessor. The rightholder may grant licenses for the exploitation of the protected varieties in accordance with the provisions of Articles 238 and 239.

Save where expressly provided for in this Law, the free exercise of a breeder's right shall not be restricted except for reasons of public interest. Where the effect of any such restriction is that the Minister of Commerce and Industry authorizes a third party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

Article 6. Article 238 of Law No. 23 of 1997 states:

Scope of the Breeder's Right

1. Breeder's right over reproduction and propagating materials:

Save as provided for in this Law with regard to exceptions and the exhaustion of the breeder's right, the breeder's authorization shall be required for the following acts in relation to the reproduction and propagating material of the protected variety:

- a. Production or reproduction (multiplication);
- b. Conditioning for the purpose of propagation;
- c. Offering for sale;
- d. Selling or other marketing;
- e. Exporting;
- f. Importing;
- g. Stocking for any of the above purposes;

The breeder may make his authorization granted by virtue of the acts listed above subject to certain conditions and limitations he may define.

2. Breeder's right over the product of the harvest:

Unless otherwise provided herein with regard to the exceptions and the exhaustion of the breeder's right, the breeder's authorization shall be required for the acts mentioned in (a) to (h) of paragraph 1 above, where such acts are performed in respect of the product of the harvest, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the propagating material.

Article 7. Article 239 of Law No. 23 of 1997 provides:

Essentially derived and certain other varieties. The provisions of the preceding article shall apply for propagation material of the protected variety or the product of the harvest in respect of:

1. Varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety.
2. Varieties which are not clearly distinguishable in accordance with Article 7 of this Law from the protected variety.
3. Varieties whose production requires the repeated use of the protected variety.

For the purposes of this Law, a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when:

- 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 the differences which 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.

Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 8. Article 241 of Law No. 23 of 1997 provides:

Authorization to sell seed. Regarding the requirements for the sale of seeds, the National Seeds Commission shall consider the provisions of this Law.

Article 9. Article 243 of Law No. 23 of 1997 states:

Conditions of Protection The breeder’s right shall be granted if the variety is new, distinct, uniform, stable and has been designated by a denomination in accordance with Article 265.

A breeder’s right shall be subject to the aforementioned conditions only and shall be granted subject to the breeder’s compliance with the formalities provided for herein and payment of the relevant fees.

Article 10. Article 244 of Law No. 23 of 1997 provides:

Novelty. The variety shall be deemed to be new if, at the date of filing of the application for a breeder’s right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

1. in the territory of the Republic of Panama, earlier than one year before that date;

2. in a territory of any other State, earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

Article 11. Article 245 of Law No. 23 of 1997 provides:

Distinctness 15.-(1) A variety shall be deemed distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of the filing of the application. In particular, in case of the filing in any country of an application for the granting of a breeder's right or the entering in a registry of varieties of varieties allowed to be traded, the variety which is the subject of the application shall be deemed to be commonly knowledge with effect from the date of the application if this leads to the grant of the breeder's right or registration in the catalogue, as the case may be.

Knowledge of the existence of the said other variety may be established by various references, such as ongoing commercial exploitation of the variety, entry of the variety in a register of varieties maintained by a recognized professional association, or the presence of the variety in a reference collection.

Article 12. Article 249 of Law No. 23 of 1997 provides:

Duration of the Breeder's Right The breeder's right shall be granted for 20 years with effect from the date of grant of the protection. For trees and vines, including, in each case, their rootstocks, the protection shall last for 25 years. The breeder's right shall be valid only for as long as the breeder pays the fees associated with the registration and maintains his rights in the terms set forth herein.

Upon expiry of the protection, the varieties shall be considered to have passed into the public domain.

Article 13. Article 250-A shall be added to Law No. 23 of 1997 as follows:

Article 250 Exceptions to the Breeder's Right The breeder's right shall not extend to

1. acts done privately and for non-commercial purposes;
2. acts done for experimental purposes; and
3. acts done for the purpose of breeding other varieties, and, except where the provisions of Article 239 apply, acts referred to in Article 238 in respect of such other varieties.

Notwithstanding the provisions of this Law regarding the scope of the breeder's right, the breeder's right in relation to any variety, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, shall be restricted in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 231(1) and (2).

Article 14. Article 250-B shall be added to Law No. 23 of 1997 as follows:

Exhaustion of the Breeder's Right. The breeder's right shall not extend to acts concerning the material of his variety or a derived variety that has been sold or

otherwise marketed in the territory of Panama by the breeder or with his consent 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.

Regarding the effects of the exhaustion of the right, “material”, in relation to a variety, shall be understood as:

1. propagating material of any kind; and
2. harvested material, including entire plants and parts of plants.

Article 15. Article 252 of Law No. 23 of 1997 provides:

Registration of plant varieties. The registration of plant varieties shall be performed by the General Directorate of the Industrial Property Registry of the Ministry of Commerce and Industry (DIGERPI).

All administrative procedures pertaining to this Law before DIGERPI may be conducted using existing or known electronic or telematic means.

All matters relating to the use of electronic or telematic means shall be governed by applicable law.

To that end, DIGERPI shall determine the general conditions, requirements and specifications necessary.

For this purpose, the General Directorate of the Industrial Property Registry shall maintain a register of plant varieties, in which it shall record applications and granted rights. The General Directorate of the Industrial Property Registry shall differentiate between the registry of applications and the registry of granted rights, which shall be public.

Any person having a legitimate interest may:

1. consult the documents relating to the application;
2. consult the documents relating to a breeder’s right that has already been granted; and,
3. Visit growing tests and examine other necessary tests for the purpose of technical review.

In the case of varieties whose production requires repeated use of other varieties (components), the applicant may, upon filing the application, request that the documents and trials relating to the components be exempted from advertising media.

The General Directorate of the Industrial Property Registry shall retain elements of records, originals or copies, for a period of five years with effect from the withdrawal or rejection of the application or the date of exhaustion of the breeder’s right, as the case may be.

Upon expiry of the aforementioned time limit, such records shall be transmitted to the General Directorate of National Archives of the Public Registry

To facilitate custody, consultation and issuance of certified copies and certifications, DIGERPI shall establish an electronic document repository which will store documents contained in the files and paper records in its custody.

The documents thus stored, together with their duly authenticated and certified copies, shall have the same legal force as the original document, be admissible as evidence and have the same force granted to documents in Volume II of the Code of Civil Procedure of the Judicial Code.

Article 16. Article 254 of Law No. 23 of 1997 provides:

Fees. The General Directorate of the Industrial Property Registry shall levy fees for services relating to the protection of plant varieties as follows:

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| a. application for breeder's right: | B/.100.00 |
| b. application for antecedents: | B/.25.00 |
| c. application for certification: | B/.35.00 |
| d. For an extract of each document: | B/.10.00 |
| e. for application to register a change of name of the owner, address, domicile, transfer, contractual or compulsory license and other administrative changes: | B/.50.00 |
| f. application for certified copy of a document: | B/.10.00 |
| g. for any publication in BORPI: | B/.10.00 |
| h. Breeder's certificate: | B/.50.00 |

Through the Minister of Commerce and Industry, the Executive is empowered to establish the amounts of fees for services not included in the previous Article which are payable by interested parties. This power shall extend to variation and new fixings which, from time to time and with the approval from the Director General of DIGERPI, are deemed necessary or desirable.

Article 17. Article 256 of Law No. 23 of 1997 provides:

Form and content of the application. Any person seeking the protection of a variety shall submit an application to the General Directorate of the Industrial Property Registry and pay the appropriate fee.

Under penalty of nullity, the application must include at least the following information:

1. the name and address of the person who created and developed the variety, if such person is not the applicant;
2. the name and address of the applicant and the legal representative;
3. the identification of the botanical taxon (Latin name or common name);
4. the proposed denomination of the variety, or a provisional designation;
5. if the priority of a previous application is claimed, the member State of the UPOV Convention that received such request and on which date;
6. official description of the variety; and
7. proof of payment of the application fee.

This matter will be duly regulated by the Executive.

Article 18. Article 257 of Law No. 23 of 1997 provides:

Priority The applicant may benefit from the priority of an earlier application filed legally for the same variety, by himself or his predecessor in title, with the authority of a UPOV member.

If the application to the General Directorate of the Industrial Property Registry was preceded by one or more applications, the priority may only be based on the earliest application.

The priority must be expressly claimed in an application to the General Directorate of the Industrial Property Registry. It may only be claimed within a period of 12 months from the date of filing of the earliest application. The filing shall date not be included in the 12-month period.

To be accorded the right of priority, the applicant must provide to the Department of Registration of Industrial Property, within three months with effect from the filing date in accordance with the provisions of this Law, a copy of the documents which constitute the first application, certified by the authority with which the application was filed.

The General Directorate of the Industrial Property Registry may require the provision, within three months as from the date of receipt of the communication, a translation of the first application or any documents that constitute the first application.

The effect of priority shall be that, with regard to the conditions of protection attaching to the variety, the application shall be deemed to have been filed at the date of filing of the first application.

The applicant shall be entitled to a period of up to two years from the date of expiry of the priority period, or, if the first application is rejected or withdrawn, of an appropriate period from the time of rejection or withdrawal, within which to furnish any information, documents or material required for the purposes of the examination provided for in this Law.

Article 19. Article 258 of Law No. 23 of 1997 provides:

Examination of the form of the application and date of filing. The application shall fulfill the requirements as to content and form.

If the application is incomplete or not formally appropriate, the General Directorate of the Industrial Property Registry shall request the applicant to correct it within 30 calendar days with effect from the date of receipt of the notification.

Any application which has not been corrected within that period shall be deemed not to have been filed.

A complete application which meets the requirements shall be assigned a date of filing, which shall be entered in the Register of Applications. The filing date shall be that on which the General Directorate of the Industrial Property Registry received the information set forth in this Law.

Article 20. Article 259 of Law No. 23 de 1997 provides:

Examination of the content of the application. The application shall be considered on its merits, in order to decide, on the basis of the information and materials provided therein, that the variety is new, distinct, uniform and stable, that the denomination is in accordance with the provisions of Article 265 and that the applicant is legally authorized under the provisions of this Law.

If the examination reveals an obstacle to the grant of the breeder's right, the application shall be rejected.

The technical examination of the variety to determine whether it is distinct, uniform and stable shall be governed by the provisions of Article 260.

Article 21. Article 260 of Law No. 23 of 1997 states:

Technical examination of the variety.

1. The variety shall undergo a technical examination to determine that it is distinct, uniform and stable.
2. Once it has been established that the variety meets the above-mentioned conditions, the official description of the variety shall be established.
3. The General Directorate of the Industrial Property Registry shall organize the examination of distinctness, uniformity and stability as follows:
 - a. The Agricultural Research Institute of Panama or the Faculty of Agricultural Sciences of the University of Panama shall grow the variety or conduct other necessary tests.
 - b. These bodies shall see to its cultivation or other necessary tests.
 - c. They shall take into account the results of growing tests or other test previously conducted.

In view of this examination, the breeder shall provide any information, documentation or material necessary, as specified in this Law or its regulations.
4. The cost of the technical examination shall be paid by the applicant directly to the institution that conducts it. Such cost will be determined by the materials used and the services provided. The examination fee shall be reasonable. This matter shall be regulated by the Executive.

Article 22. Article 262 of Law No. 23 of 1997 provides:

Publication of the application. If the application meets the requirements of this Law, it shall be published in the Official Bulletin of the of Industrial Property Registry (BORPI) supported, at least, by the items set forth in Article 256(1), (2), (3), (4) and (5).

Article 23. Article 263 of Law No. 23 of 1997 provides:

Challenge to the granting of a breeder's right. Once an application is published any person who considers that the applicant should not be granted a breeder's certificate may, within two months from the date of publication in the BORPI, file a challenge before the courts with jurisdiction over industrial property, according to the procedure set forth in Law No. 35 of May 10, 1996.

The challenge may only seek the dismissal of the application on the grounds that the variety is not new, distinct, uniform and stable, or that the applicant is not entitled to protection.

Article 24. Article 264 of Law No. 23 of 1997 provides:

Grant of breeder's right and rejection of the application. The General Directorate of the Industrial Property Registry shall grant the breeder's right where, as a result of the technical review of the variety, conducted by the Agricultural Research Institute of Panama or the Faculty of Agricultural Sciences of the University of Panama or any other agency designated for this purpose, it is established that the variety meets the conditions set forth in Article 243 and that the applicant has satisfied all other requirements of this Law.

The General Directorate of the Industrial Property Registry shall reject the application if it finds otherwise.

The grant of a breeder's right or the rejection of the application shall be entered in the register of plant varieties and published in the BORPI.

The breeder's right shall also be entered into the Registry. The description of the variety may be included by reference in the registration of the technical files of the General Directorate of the Industrial Property Registry and examinations conducted by the Agricultural Research Institute of Panama or the Faculty of Agricultural Sciences of the University of Panama or by any other designated agency.

Article 25. Article 264-A shall be added to Law No. 23 of 1997 as follows:

Provisional protection. Provisional protection shall be provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

The holder of a breeder's right shall at least be entitled to equitable remuneration or, if warranted, to reasonable compensation from any person who, during the period provided in the previous paragraph, has performed acts which, once the right is granted, require the breeder's authorization as provided in Article 238 and 239.

Article 26. Article 265 of Law No. 23 of 1997 provides:

Denomination

1. The variety shall be designated by a denomination which shall be its generic designation. Subject to paragraph 4, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.
2. The denomination must enable the variety to be identified. It may not consist solely of figures, except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in

the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

3. The denomination of the variety shall be proposed by the breeder to the General Directorate of the Industrial Property Registry. If it is found that the denomination does not satisfy the requirements of paragraph 2, the General Directorate of the Industrial Property Registry shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the General Directorate of the Industrial Property Registry at the same time as the breeder's right is granted.
4. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph 7, is obliged to use it, the General Directorate of the Industrial Property Registry shall require the breeder to submit another denomination for the variety.
5. Any variety that is the subject of an application for the grant of a breeder's right shall be completed under the same name in all UPOV members. The General Directorate of the Industrial Property Registry shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.
6. The General Directorate of the Industrial Property Registry shall ensure that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the General Directorate of the Industrial Property Registry.
7. Any person who offers for sale or markets propagating material of a variety protected within the territory of the Republic of Panama shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph 4, prior rights prevent such use.
8. When a variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 27. Article 267 of Law No. 23 of 1997 provides:

Registration Formalities. The denomination proposed for the variety for which protection is sought shall be submitted at the same time as the application.

Subject to the payment of a fee and the indication of a provisional designation in the application, the applicant may defer the procedure for registration of the denomination. In such case, the applicant shall submit the proposed designation within 30 days with effect from the date of receipt of the request. If the proposal is not submitted within this deadline, the application shall be rejected.

To consider the feasibility of a denomination, the General Directorate of the Industrial Property Registry shall submit its proposal to the Institute of

Agricultural Research of Panama, which is the competent authority to determine whether a name may be registered. The General Directorate of the Industrial Property Registry shall accept the findings of the report of the Institute of Agricultural Research of Panama.

The denomination shall be registered at the same time as the grant of the breeder's right.

The proposed designation shall be published in the Bulletin unless the General Directorate Registry of Industrial Property rejects it in accordance with the provisions of this law.

Once the application is published, any person who believes that the registration of the name should not be allowed, based on any of the grounds for rejection provided for in this Law, may file within two months from the date of publication in the BORPI, a challenge with the courts with jurisdiction over Industrial Property, in accordance with the procedure outlined in Law No. 35 of May 10, 1996.

Article 28. Article 268 of Law No. 23 of 1997 provides:

Cancellation of a Denomination and Registration of a New Denomination.

The General Directorate of the Industrial Property Registry shall cancel the registered name:

1. If the right holder so requests, citing the existence of a legitimate interest.
2. if a third person submits a court decision prohibiting the use of the denomination in relation to the variety. Any interested party, after hearing the owner, may request the courts with jurisdiction over industrial property to declaring invalid a registered name if it does not meet the requirements of this Law.

Regarding this Article, the affected party may file a new name which shall be recorded and published as soon as it is approved, subject to opposition and revocation if necessary.

Article 29. Article 270 of Law No. 23 of 1997 provides:

Rights. For the duration of the right, the breeder shall pay the fest set out below:

- a. two hundred balboas (B/. 200) prior to the granting of registration, which shall be equivalent to the first five years of protection;
- b. two thousand two hundred balboas (B/. 2200) upon expiration of the first term of protection and for the next five years;
- c. Two thousand four hundred balboas (B/. 2400) upon expiration of the second term of protection, for the next five years;
- d. Three thousand two hundred balboas (B/. 3200) upon expiration of the third term of protection and for the remainder of the protection.

Payment may be made at any time before the expiration date of the relevant five years, except for the first payment. If no payment is made after six months from the date on which payment of any of the fees referred to in this Article is due, the breeder will be understood to have abandoned his breeder's right, which shall lapse as of right.

Article 30. Article 271 of Law No. 23 of 1997 states:

Expiration and waiver of the breeder's right. The breeder's right shall pass into the public domain when:

1. Its validity expires at the end of the time limit specified in Article 249.
2. The rightholder waives the right by written notice to the General Directorate of the Industrial Property Registry.

Article 31. Article 271-A is added to Law No. 23 of 1997 as follows:

Cancellation of the Breeder's Right

1. The breeder's right may be declared extinct if it appears that the conditions of uniformity and stability are no longer fulfilled.
2. Furthermore, the breeder's right may be cancelled if, after being requested to do so within the prescribed period:
 - a. the breeder fails to provide the information, documents or material deemed necessary for the verification of the maintenance of the variety;
 - b. the breeder fails to pay such fees as may be due to keep his right in force; and
 - c. the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.
3. A breeder's right may not be revoked for reasons other than those set forth in paragraphs 1 and 2 above.

Article 32. Article 272 of Law No. 23 of 1997 states:

Nullity of the Breeder's Right. The breeder's right shall be declared null and void when it is established:

1. that the variety was not new or distinct on the date of filing of the application or, as the case may be, the date of priority;
2. that, where the grant of the breeder's right was based essentially upon information and documents furnished by the breeder, the variety was not uniform or stable on the above-mentioned date; and
3. the breeder's right was granted to a person not entitled to it, and that the claimant did not engage in, or declined to engage in, an application for judicial adjudication, in accordance with Article 242.

Except otherwise provided in this Law, a breeder's right which is declared null shall be considered not to have been granted.

Any person demonstrating an interest shall be entitled to file a petition for annulment before the courts with jurisdiction over Industrial Property, in accordance with the procedure set forth in Law No. 35 of May 10, 1996.

Article 33. Article 273 of Law No. 23 of 1997 provides:

Civil remedies. Any person who, without authorization, performs acts that require the authorization of the holder, uses a designation or fails to use a variety denomination in violation of the provisions of this Law, may be sued by the breeder or the holder of an exclusive license. The provisions for unauthorized use

of industrial property rights and the procedure established by Law 35 of May 10, 1996 shall be applied in such person's regard.

Subject to the provisions of this Law, the provisions applicable to the exercise of rights conferred by virtue of inventions and utility models, as established by the provisions governing Industrial Property in the Republic of Panama, shall apply *mutatis mutandis* to the exercise of rights under a plant breeder's right.

Article 34. Article 275 of Law No. 23 of 1997 provides:

Economic sanctions linked to unauthorized use of the name of a plant variety. Without prejudice to claims for compensation or other claims by the rightholder or the licensee, a court may, at the request of the claimant, impose a financial penalty of one thousand balboas (B/. 1,000) to ten thousand balboas (B/. 10,000) and double this penalty in case of recidivism, if it is shown that the defendant knowingly used a designation or failed to use a variety designation in violation of the provisions of this Law.

Article 35. Article 279 of Law No. 23 of 1997 provides:

Article 279 Coordination The Agricultural Research Institute shall coordinate with the General Directorate of the Industrial Property Registry all matters relating to the examination of the application with regard to botanical taxa, technical reviews, maintaining the variety, the viability of the denominations, publication in the Official Bulletin of the Industrial Property Registry, and any other action necessary for the adequate protection and registration of the plant variety.

Article 36. The present Law amends Articles 232, 233, 234, 236, 237, 238, 239, 241, 243, 244, 245, 249, 252, 254, 256, 257, 258, 259, 260, 262, 263, 264, 265, 267, 268, 270, 271, 272, 273, 275 and 279, adds Articles 250-A, 250-B y 264-A, 271-A, repeals Articles 240, 266, 274 and 280 of Law No. 23 of July 15, 1997 and all other contrary provisions.

Article 37. This law shall come into effect on the day of its promulgation.

It is ordered that communication and fulfilment be provided.

Bill 512 of 2012, approved upon third reading in the Palacio Justo Arosemena, city of Panama, on the twenty-sixth day of the month of September in the year two thousand and twelve.

The President

Sergio R. Gálvez Evers

The Secretary-General

Wigberto E. Quintero G.

**NATIONAL EXECUTIVE, PRESIDENCY OF THE REPUBLIC, PANAMA
REPUBLIC OF PANAMA, OCTOBER 5, 2012**

Ricardo Martinelli Berrocal

President of the Republic

Ricardo Quijano J.

Minister of Commerce and Industry