



# BUYING OR SELLING SEED?

## FARMERS – KNOW YOUR RIGHTS!

Current market conditions may create illegal sales (brown-bagging) of crop seeds. You may unknowingly buy or sell seed illegally if you do not know your rights!

Those engaged in this illegal practice risk significant penalties. Violators of the U.S. Plant Variety Protection Act (PVPA) may be fined and face substantial civil penalties. These fines can extend to the conditioner, seller, buyer and anyone who assists in the unauthorized sale of protected varieties.

### REMEMBER:

- A “farmer’s right to save seed” is limited to the amount that can be used to plant their own farm (U.S. Supreme Court, 1995).
- Farmers are not permitted to sell any seed of a variety protected after April 4, 1995 and identified as a PVP 94 variety.
- Seed handlers or conditioners are prohibited from cleaning or otherwise handling more than the amount of seed allowed under the “farmer’s right to save seed”.
- Advertising or other use of a third party to sell seed of a protected variety invalidates the “farmer’s right to save seed”.
- The Minnesota Seed Law specifies labeling requirements for seed offered for sale in Minnesota. These requirements protect both the buyer and the seller.

### READ MORE ABOUT THE LAW

[www.mda.state.mn.us/licensing/grainseed/fsmsrp.htm](http://www.mda.state.mn.us/licensing/grainseed/fsmsrp.htm) or call 651-201-6123.

### FOR WHEAT SEED AVAILABILITY INFORMATION

North Dakota ..... <http://www.nd.gov/seed/reports/cwht.asp> ..... Phone 701-231-5400

Minnesota ..... [http://www.mncia.org/pub\\_directory2008.pdf](http://www.mncia.org/pub_directory2008.pdf) ..... Phone 612-625-7766

South Dakota ..... <http://plantsci.sdstate.edu/seedcert/Growerdir.htm> ..... Phone 605-688-4604

## LOOK FOR THE SEED LABEL!

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All seed offered for sale in containers or in bulk for sowing purposes in Minnesota must have attached a seed label containing the information required by the Minnesota Seed Law (Minnesota Statutes, section 21.82). Proper labeling is the responsibility of the person or firm whose name appears on the label as the labeler. There are no exceptions to this requirement. A legal seed label in Minnesota includes the following:

- *Kind and variety*
- *Lot number*
- *Percentages for germination, pure seed, weed seed, other crop seed, and inert matter*
- *Origin*
- *Name and number of noxious weed seeds*
- *Test and/or sell by dates (12 month limit)*
- *Name and address of the labeler*

Seed labeling protects the farmer by providing truthful information about the source, genetic identity or variety, and quality of the seed being purchased. Expected performance of the seed should be based on varietal characteristics and the quality factors listed on the label. Without a label, there is no declaration of capability and no proof the seed is actually intended for planting purposes. Without proof, it can be difficult, if not impossible; to seek damages from a seed seller if a farmer believes the seed didn't perform as expected.

Seed labeling also protects labelers, distributors, and retailers by providing truthful information about the performance capability of the seed. This means that if the seed is used properly by the buyer, it will provide the desired performance under normal growing conditions.

## IS THE VARIETY PROTECTED? DOES IT CONTAIN PATENTED GENETIC MATERIAL? IS IT REQUIRED TO BE A CLASS OF CERTIFIED SEED?

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These are questions sellers must answer before attempting to market seed and what buyers should know so that they look for it in the labeling. Many popular varieties of agricultural crops are protected by the Plant Variety Protection Act (PVPA). This means that seed of these varieties cannot be sold without authorization of the owner of the variety. The PVPA provides farmers with the "right to save seed" to plant on their own farm. Prior to 1994, a farmer could either sell that amount or use it themselves. As a result of amendments to the PVPA in 1994 and related U.S. Supreme Court decisions in 1995, a farmer can no longer legally sell seed of a variety that was protected by PVPA after 1994.

Some PVPA protected varieties must be sold as a class of certified seed. In addition to the required seed labeling, these varieties must also have documentation of their certified status to be legally sold in Minnesota. The documentation is either a blue, purple, or white certification tag for bagged seed or a bulk certificate. The Minnesota Crop Improvement Association (MCIA) is the designated seed certification agency for Minnesota. MCIA is the only agency that can certify seed produced here. Seed brought in from another state may have been certified by the designated agency of the state where it was produced. That certification is also accepted here.

Many varieties of seed are covered by a federal plant patent because they contain genetic material that is patented or they were developed using a patented process. In either case, no one can legally sell seed of these varieties without the permission of the owner. The seed label usually contains a notice of the patent and a warning against unauthorized sales of seed of the variety. The seed producer legally selling a patented variety has been licensed by the owner to produce and sell the seed in exchange for royalties.

Misrepresentation of seed as being certified when it is not, or the sale of non-certified seed of a protected variety that must be certified are serious violations of both Minnesota and Federal law. Violation of the PVPA or a plant patent deprives the owner of the variety of their rightful royalties. The owner of the protected or patented variety may, and probably will, sue violators and can be awarded damages of up to three times the royalty plus legal costs. Damages may be sought against the actual seller as well as anyone who assisted in the illegal sale.

### SEED PERMITS

Initial labelers are required to have a current Minnesota seed permit, even if the firm is located out of state. An initial labeler is the first person or firm to label the seed when it is offered for sale in Minnesota. There are no exceptions to this requirement. Minnesota seed permit fees are based on the volume of seed sold in the state.

### POINTS TO KEEP IN MIND

#### Seed Buyers

- *Buy seed only from a reputable source.*
- *Carefully review seed ads to make sure they are providing the information you need.*
- *Never buy seed that isn't labeled.*
- *Be aware of certification and patent restrictions.*
- *Keep a copy of the label for each lot purchased as well as all receipts.*

#### Seed Sellers

- *Label seed completely and accurately.*
- *Make sure licensing agreements allow you to sell seed of the variety you plan to market.*
- *Know the certification requirements for the variety you are marketing and comply with them.*
- *Keep the required records for each lot sold.*
- *Obtain a permit if one is needed.*