

By: Nichols

S.B. No. 1457

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to bad faith claims of patent infringement; providing a  
3 civil penalty; creating a criminal offense.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 17, Business & Commerce Code, is amended  
6 by adding Subchapter L to read as follows:

## SUBCHAPTER L. BAD FAITH CLAIMS OF PATENT INFRINGEMENT

**Sec. 17.951. BAD FAITH CLAIMS OF PATENT INFRINGEMENT**

9 PROHIBITED. A person may not send 10 or more written communications  
10 per calendar year in which the person makes a bad faith claim of  
11 patent infringement against a person located or doing business in  
12 this state. A person makes a bad faith claim of patent infringement  
13 if the communication includes an allegation that the recipient or a  
14 person affiliated with the recipient has infringed a patent and is  
15 liable for that infringement and:

18 (2) the claim is objectively baseless because:

24 (c) the infringing activity alleged in the patent

1   occurred after the patent expired; or  
2                    (3) the communication is likely to materially mislead  
3   a reasonable recipient because the communication does not contain  
4   information sufficient to inform the recipient of:  
5                    (A) the identity of the person asserting the  
6   claim;  
7                    (B) the patent that is alleged to have been  
8   infringed; and  
9                    (C) at least one product, service, or activity of  
10   the recipient that is alleged to infringe the patent.

11           Sec. 17.952. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTION  
12   AND CIVIL PENALTY. (a) If the attorney general believes that a  
13   person has violated or is violating Section 17.951, the attorney  
14   general may bring an action on behalf of the state to enjoin the  
15   person from violating that section.

16           (b) In addition to seeking an injunction under Subsection  
17   (a), the attorney general may request and the court may order any  
18   other relief that may be in the public interest, including:

19            (1) the imposition of a civil penalty in an amount not  
20   to exceed \$50,000 for each violation of Section 17.951;

21            (2) an order requiring reimbursement to this state for  
22   the reasonable value of investigating and prosecuting a violation  
23   of Section 17.951; and

24            (3) an order requiring restitution to a victim for  
25   legal and professional expenses related to the violation.

26           Sec. 17.953. CONSTRUCTION OF SUBCHAPTER. This subchapter  
27   may not be construed to:

1                   (1) limit rights and remedies available to the state  
2                   or another person under any other law;

3                   (2) alter or restrict the attorney general's authority  
4                   under other law with regard to conduct involving claims of patent  
5                   infringement; or

6                   (3) prohibit a person who owns or has a right to  
7                   license or enforce a patent from:

8                   (A) notifying others of the person's ownership or  
9                   right;

10                   (B) offering the patent to others for license or  
11                   sale;

12                   (C) notifying any person of the person's  
13                   infringement of the patent as provided by 35 U.S.C. Section 287; or

14                   (D) seeking compensation for past or present  
15                   infringement of the patent or for a license to the patent.

16                   SECTION 2. Section 38.12, Penal Code, is amended by  
17 amending Subsections (a) and (f) and adding Subsection (f-1) to  
18 read as follows:

19                   (a) A person commits an offense if, with intent to obtain an  
20 economic benefit the person:

21                   (1) knowingly institutes a suit or claim that the  
22 person has not been authorized to pursue;

23                   (2) solicits employment, either in person or by  
24 telephone, for himself or for another;

25                   (3) pays, gives, or advances or offers to pay, give, or  
26 advance to a prospective client money or anything of value to obtain  
27 employment as a professional from the prospective client;

S.B. No. 1457

1 (4) pays or gives or offers to pay or give a person  
2 money or anything of value to solicit employment:

3 (5) pays or gives or offers to pay or give a family  
4 member of a prospective client money or anything of value to solicit  
5 employment; [or]

6 (6) accepts or agrees to accept money or anything of  
7 value to solicit employment; or

11 (f) Except as provided by Subsection (f-1), an [An] offense  
12 under Subsection (a) or (b) is a felony of the third degree.

13                   (f-1) An offense under Subsection (a)(7) is a Class A  
14 misdemeanor.

15 SECTION 3. This Act takes effect September 1, 2015.