

By: Nichols

S.B. No. 1457

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Chapter 17, Business & Commerce Code, is amended 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 PROHIBITED. A person may not send 10 or more written communications per calendar year in which the person makes a bad faith claim of patent infringement against a person located or doing business in this state. A person makes a bad faith claim of patent infringement if the communication includes an allegation that the recipient or a person affiliated with the recipient has infringed a patent and is liable for that infringement and:

(1) the communication falsely states that the sender has filed a lawsuit in connection with the claim;

(2) the claim is objectively baseless because:

(A) the sender or a person the sender represents does not have a current right to license the patent to or enforce the patent against the recipient;

(B) the patent has been held invalid or unenforceable in a final judgment or administrative decision; or

(C) the infringing activity alleged in the patent

occurred after the patent expired; or

(3) the communication is likely to materially mislead a reasonable recipient because the communication does not contain information sufficient to inform the recipient of:

(A) the identity of the person asserting the claim;

(B) the patent that is alleged to have been infringed; and

(C) at least one product, service, or activity of the recipient that is alleged to infringe the patent.

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

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

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

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

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

Sec. 17.953. CONSTRUCTION OF SUBCHAPTER. This subchapter 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;

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

8 (7) knowingly institutes a suit or claim for patent
9 infringement that constitutes a bad faith claim of patent
10 infringement under Section 17.951, Business & Commerce Code.

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.