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S.B. No. 1457

A BILL TO BE ENTITLED

AN ACT

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

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. DEFINITION. In this subchapter, "end user"
means a person that purchases, rents, leases, or otherwise obtains
a product, service, or technology in the commercial market that is
not for resale and that is, or later becomes, the subject of a
patent infringement assertion due to the person's use of the
product, service, or technology.

Sec. 17.952. BAD FAITH CLAIM OF PATENT INFRINGEMENT
PROHIBITED. (a) A person may not send to an end user located or
doing business in this state a written or electronic communication
that is a bad faith claim of patent infringement.

(b) A communication is a bad faith claim of patent
infringement if the communication includes a claim that the end
user or a person affiliated with the end user 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:

1 (A) the sender or a person the sender represents
2 does not have a current right to license the patent to or enforce
3 the patent against the end user;

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

6 (C) the infringing activity alleged in the
7 communication occurred after the patent expired; or

8 (3) the communication is likely to materially mislead
9 a reasonable end user because the communication does not contain
10 information sufficient to inform the end user of:

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

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

15 (C) at least one product, service, or technology
16 obtained by the end user that is alleged to infringe the patent or
17 the activity of the end user that is alleged to infringe the patent.

18 Sec. 17.953. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTION
19 AND CIVIL PENALTY. (a) If the attorney general believes that a
20 person has violated or is violating Section 17.952, the attorney
21 general may bring an action on behalf of the state to enjoin the
22 person from violating that section.

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

26 (1) the imposition of a civil penalty in an amount not
27 to exceed \$50,000 for each violation of Section 17.952;

1 (2) an order requiring reimbursement to this state for
2 the reasonable value of investigating and prosecuting a violation
3 of Section 17.952; and

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

6 Sec. 17.954. CONSTRUCTION OF SUBCHAPTER. This subchapter
7 may not be construed to:

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

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

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

15 (A) notifying others of the person's ownership or
16 right;

17 (B) offering the patent to others for license or
18 sale;

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

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

23 Sec. 17.955. NO PRIVATE CAUSE OF ACTION. This subchapter
24 does not create a private cause of action for a violation of Section
25 17.952.

26 SECTION 2. This Act takes effect September 1, 2015.