

1-1 By: Nichols S.B. No. 1457  
1-2 (In the Senate - Filed March 12, 2015; March 19, 2015, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 15, 2015, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 15, 2015,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Ellis	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Fraser	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1457 By: Ellis

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to bad faith claims of patent infringement; providing a  
1-22 civil penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 17, Business & Commerce Code, is amended  
1-25 by adding Subchapter L to read as follows:

1-26 SUBCHAPTER L. BAD FAITH CLAIMS OF PATENT INFRINGEMENT

1-27 Sec. 17.951. DEFINITION. In this subchapter, "end user"  
1-28 means a person that purchases, rents, leases, or otherwise obtains  
1-29 a product, service, or technology in the commercial market that is  
1-30 not for resale and that is, or later becomes, the subject of a  
1-31 patent infringement assertion due to the person's use of the  
1-32 product, service, or technology.

1-33 Sec. 17.952. BAD FAITH CLAIM OF PATENT INFRINGEMENT  
1-34 PROHIBITED. (a) A person may not send to an end user located or  
1-35 doing business in this state a written or electronic communication  
1-36 that is a bad faith claim of patent infringement.

1-37 (b) A communication is a bad faith claim of patent  
1-38 infringement if the communication includes a claim that the end  
1-39 user or a person affiliated with the end user has infringed a patent  
1-40 and is liable for that infringement and:

1-41 (1) the communication falsely states that the sender  
1-42 has filed a lawsuit in connection with the claim;

1-43 (2) the claim is objectively baseless because:

1-44 (A) the sender or a person the sender represents  
1-45 does not have a current right to license the patent to or enforce  
1-46 the patent against the end user;

1-47 (B) the patent has been held invalid or  
1-48 unenforceable in a final judgment or administrative decision; or

1-49 (C) the infringing activity alleged in the  
1-50 communication occurred after the patent expired; or

1-51 (3) the communication is likely to materially mislead  
1-52 a reasonable end user because the communication does not contain  
1-53 information sufficient to inform the end user of:

1-54 (A) the identity of the person asserting the  
1-55 claim;

1-56 (B) the patent that is alleged to have been  
1-57 infringed; and

1-58 (C) at least one product, service, or technology  
1-59 obtained by the end user that is alleged to infringe the patent or  
1-60 the activity of the end user that is alleged to infringe the patent.

2-1 Sec. 17.953. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTION  
2-2 AND CIVIL PENALTY. (a) If the attorney general believes that a  
2-3 person has violated or is violating Section 17.952, the attorney  
2-4 general may bring an action on behalf of the state to enjoin the  
2-5 person from violating that section.

2-6 (b) In addition to seeking an injunction under Subsection  
2-7 (a), the attorney general may request and the court may order any  
2-8 other relief that may be in the public interest, including:

2-9 (1) the imposition of a civil penalty in an amount not  
2-10 to exceed \$50,000 for each violation of Section 17.952;

2-11 (2) an order requiring reimbursement to this state for  
2-12 the reasonable value of investigating and prosecuting a violation  
2-13 of Section 17.952; and

2-14 (3) an order requiring restitution to a victim for  
2-15 legal and professional expenses related to the violation.

2-16 Sec. 17.954. CONSTRUCTION OF SUBCHAPTER. This subchapter  
2-17 may not be construed to:

2-18 (1) limit rights and remedies available to the state  
2-19 or another person under any other law;

2-20 (2) alter or restrict the attorney general's authority  
2-21 under other law with regard to conduct involving claims of patent  
2-22 infringement; or

2-23 (3) prohibit a person who owns or has a right to  
2-24 license or enforce a patent from:

2-25 (A) notifying others of the person's ownership or  
2-26 right;

2-27 (B) offering the patent to others for license or  
2-28 sale;

2-29 (C) notifying any person of the person's  
2-30 infringement of the patent as provided by 35 U.S.C. Section 287; or

2-31 (D) seeking compensation for past or present  
2-32 infringement of the patent or for a license to the patent.

2-33 Sec. 17.955. NO PRIVATE CAUSE OF ACTION. This subchapter  
2-34 does not create a private cause of action for a violation of Section  
2-35 17.952.

2-36 SECTION 2. This Act takes effect September 1, 2015.

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