

BAD-FAITH PATENT INFRINGEMENT CLAIMS ACT

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<http://www.house.mi.gov/hfa>

House Bill 4587 as introduced
Sponsor: Rep. Mike Callton, D.C.
Committee: Judiciary
Complete to 2-16-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill creates a stand-alone act entitled the "Bad-Faith Patent Infringement Claims Act." Briefly, the bill will do the following:

- ❖ Specify that a person shall not make a bad-faith assertion of patent infringement, and provide a list of factors that a court may consider as evidence that a person has made a bad-faith assertion of patent infringement.
- ❖ Provide a list of factors as evidence that a bad-faith assertion of patent infringement was not made.
- ❖ Allow a target (a person against whom an allegation of patent infringement is being made) or a person aggrieved by a violation of the new act or rules promulgated under it to bring an action in the circuit court.
- ❖ Allow a plaintiff that prevails in an action brought under the act to be awarded equitable relief, damages, costs and fees (including reasonable attorney fees), and exemplary damages equal to \$50,000 or three times the total of actual damages, costs, and fees, whichever is greater.
- ❖ Require the court, upon a motion by a target, to require the person alleging patent infringement to post a bond in an amount equal to a good-faith estimate of the costs of the "target" (the person against whom the allegation is being made) to litigate the claim, and an amount reasonably likely to be recovered by a target for a violation of the act, if the court determines there is a reasonable likelihood that a bad-faith assertion of patent infringement has been made. The bond could not exceed \$250,000. A court could waive the bond requirement upon a finding that the person alleged to have made the bad-faith assertion has available assets equal to the amount of the proposed bond or for other good cause shown.
- ❖ Grant the same authority to the attorney general under the new act to make rules, conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as the attorney general enjoys under the Michigan Consumer Protection Act (MCPA). In an action brought by the attorney general under this act, the court could award or impose any relief available under the MCPA.

- ❖ Specify the act would not limit rights and remedies available to the state or any person under any law and would not alter or restrict the attorney general's authority under the MCPA regarding conduct involving assertions of patent infringement.
- ❖ Exempt from application of the act a demand letter or assertion of a patent infringement that includes a claim for relief arising under 35 USC 271(e)(2) in federal law, which pertains to an act of infringement involving a drug claimed in a patent.
- ❖ List several legislative findings, including that abusive patent litigation, and especially the assertion of bad-faith infringement claims, can harm Michigan companies, and that through the act, the Legislature seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect businesses in the state from abusive and bad-faith assertions of patent infringement, and build the state's economy while respecting federal law and being careful not to interfere with legitimate patent enforcement actions.
- ❖ Define the terms "target" and "demand letter".

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.