



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bill 289 (Substitute S-3 as reported by the Committee of the Whole)  
Sponsor: Senator Margaret E. O'Brien  
Committee: Judiciary

### **CONTENT**

The bill would create the "Bad-Faith Patent Infringement Claims Act" to do the following:

- Specify that it would be an unlawful practice, in connection with the assertion of a United States patent, to send a written or electronic communication to a person stating in bad faith that the target infringed a patent and was liable or owed compensation to another person, if the communication made certain false statements or other conditions applied.
- Authorize the Attorney General to conduct civil investigations, enter into an assurance of discontinuance, bring civil actions, and promulgate rules.
- Allow a person aggrieved by a violation of the Act to bring an action in circuit court, and if the person prevailed, allow the court to order injunctive relief and award costs and fees, actual damages, and exemplary damages equal to three times the actual damages.
- Allow the court to order the defendant to post a bond equal to a good-faith estimate of a target's cost to litigate the claim, and an amount likely to be awarded, up to \$250,000.
- Allow the court to waive the bond requirement if the defendant had available assets equal to the amount of the proposed bond or for other good cause.
- Allow the Attorney General, after an ex parte application and hearing, to issue a subpoena compelling an individual to appear before the Attorney General to answer questions under oath and to produce documents or other things relating to an alleged violation of the Act.
- Specify the requirements for service, and contents, of a subpoena issued under the Act.
- Specify that information obtained under an investigation by the Attorney General would be considered confidential records exempt from disclosure under the Freedom of Information Act, except as otherwise provided.
- Make it a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$2,500, to knowingly disclose confidential information in violation of the Act.
- Allow the Attorney General, under certain circumstances, to bring an action to restrain a person from violating of the Act by temporary or permanent injunction.
- Allow a court to assess various civil fines for violations of the Act.
- Provide that the Act would not make it unlawful for a person that owned or had the right to license or enforce a patent to take certain actions.

The proposed Act would not apply to an owner or exclusive licensee of a patent under certain circumstances, institutions of higher education, a technology transfer organization under certain circumstances, or a person seeking a claim for relief arising under certain Federal laws.

The bill would take effect on July 1, 2016.

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Department of Attorney General. According to the Attorney General's office, the bill would increase its litigation costs; however, an estimate of the amount of those additional costs is indeterminate and dependent on the number of actual cases the office would have to litigate. The Department has indicated that, depending on the increase in cases, it could have to hire additional staff. The current estimated statewide average cost for one FTE is approximately \$90,000 annually.

In addition, the bill would create a misdemeanor penalty for a violation involving the knowing disclosure of confidential information. Any increase in misdemeanors could increase demands on local court systems and jails. Any associated fine revenue would be provided to public libraries.

Date Completed: 6-8-16

Fiscal Analyst: Joe Carrasco  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.