

BAD-FAITH PATENT INFRINGEMENT CLAIMS ACT (EXCERPT)
Act 550 of 2016

446.169a Ex parte application and hearing; subpoena; confidentiality of documents, things, or other information obtained by attorney general; disclosure of confidential information as misdemeanor; conduct subject to civil fine; enforcement; violation of final order as civil contempt.

Sec. 9a. (1) On the ex parte application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham County, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in an unlawful practice under this act, may, after an ex parte hearing, issue a subpoena compelling an individual to appear before the attorney general and answer under oath questions relating to an alleged violation of this act. An individual served with a subpoena may be accompanied by counsel when he or she appears before the attorney general. The subpoena may compel the individual to produce the books, records, papers, documents, or things relating to the alleged violation of this act. During the examination of documents and things under the subpoena, the court may require an individual who has knowledge of the documents and things or the matters contained in the documents and things to attend and give testimony under oath or acknowledgment with respect to the documents and things.

(2) A subpoena issued under this section must include notice of the time, place, and cause for the taking of testimony, the examination, or the attendance and must allow not less than 10 days before the date of the taking of testimony or examination, unless for good cause shown the court shortens that time.

(3) A subpoena issued under this section must be served in the manner provided and subject to the provisions that apply to service of process on a defendant in a civil action commenced in the circuit court.

(4) A subpoena issued under this section must include all of the following:

(a) The time and place for the taking of testimony or the examination and the name and address of the individual to be examined. If the name is not known, the subpoena must give a general description sufficient to identify the individual or the particular class or group to which the individual belongs.

(b) A reference to this section and the general subject matter under investigation.

(c) A description of any documents or things to be produced with reasonable specificity so as to indicate fairly what is demanded.

(d) A return date within which any documents or things must be produced.

(e) Identification of the members of the attorney general's staff to whom any documents and things must be made available for inspection and copying.

(5) At any time before the date specified in a subpoena issued under this section, on motion for good cause shown, the court may extend the reporting date or modify or set aside the subpoena.

(6) Documents, things, or other information obtained by the attorney general under an investigation under this section are confidential records of the office of the attorney general and are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243. The attorney general shall not make the documents, things, or other information available for public inspection or copying or divulge them to any person except as provided in this section. The attorney general may disclose documents, things, or other information as follows:

(a) To other law enforcement officials.

(b) In connection with an enforcement action brought under this act.

(c) On order of the court, to a party in a private action brought under this act.

(7) An individual who knowingly discloses information designated confidential by this section, except as permitted by subsection (6) or under court order, is guilty of a misdemeanor and may be imprisoned for not more than 1 year or fined not more than \$2,500.00, or both.

(8) An individual on whom a subpoena is served under this section shall comply with the terms of the subpoena unless otherwise provided by the order of the circuit court.

(9) An individual who does any of the following is subject to a civil fine of not more than \$10,000.00.

(a) Knowingly without good cause fails to appear after being served with a subpoena.

(b) Knowingly avoids, evades, or prevents compliance, in whole or in part, with an investigation, including by removing from any place, concealing, destroying, mutilating, altering, or falsifying any documents or things in the possession, custody, or control of a person subject to the subpoena.

(c) Knowingly conceals relevant information.

(10) The attorney general may file a petition in the circuit court of the county in which the individual subpoenaed is established or conducts business or, if the individual is not established in this state, in the circuit court of Ingham County for an order to enforce compliance with a subpoena or this section. A person

that violates a final order entered under this section is subject to punishment for civil contempt.

History: 2016, Act 550, Eff. Oct. 1, 2017.