



AN ACT GENERALLY REVISING THE LAWS RELATED TO PATENT AND COPYRIGHT TROLLING; PROVIDING FOR THE CIVIL OFFENSE OF BAD FAITH ASSERTION OF A PATENT RIGHT, INCLUDING REMEDIES AND DAMAGES AVAILABLE FOR THE OFFENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

- (1) "Affiliated person" means a person under common ownership or control of an intended recipient.
- (2) "Intended recipient" means a person who purchases, rents, leases, or otherwise obtains a product or service in the commercial market that is not for resale in the person's ordinary business and that is or later becomes the subject of a patent infringement allegation.
- (3) "Person" means a natural person, partnership, corporation, company, trust, business entity, or association and an agent, employee, partner, officer, director, member, associate, or trustee of a person.

Section 2. Bad faith assertion of patent right. (1) A person may not, in connection with the assertion of a United States patent, send or cause a person to send a written or electronic communication stating in bad faith that the intended recipient or an affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person if:

- (a) the communication falsely states that litigation has been filed against the intended recipient or threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved; or
- (b) the assertions contained in the communication lack a reasonable basis in fact or law because:
 - (i) the person asserting the patent is not or does not represent a person with the current right to license the patent to or enforce the patent against the intended recipient or an affiliated person;
 - (ii) the communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final judicial or administrative decision;

(iii) the communication seeks compensation on account of activities undertaken after the patent has expired; or

(iv) the content of the communication fails to include information necessary to inform an intended recipient or affiliated person about the patent assertion by failing to include one of the following:

(A) the identity of the person asserting a right to license the patent to or enforce the patent against the intended recipient or an affiliated person;

(B) the patent number issued by the United States patent and trademark office for a patent that is alleged to have been infringed; or

(C) the factual allegations concerning the specific area in which the intended recipient's or affiliated person's technology, products, or services infringed the patent or are covered by the claims of the patent.

(2) It is not a violation of this section for a person who owns or has the right to license or enforce a patent to:

(a) advise others of that ownership or right of license or enforcement;

(b) communicate to others that a patent is available for license or sale;

(c) notify another of the infringement of the patent; or

(d) if the person is not acting in bad faith, seek compensation for past or present infringement or for a license to the patent.

(3) [Sections 1 through 4] do not apply to a written or electronic communication sent by:

(a) an owner of a patent or a licensee who is using the patent in connection with substantial research, development, production, manufacturing, processing, or delivery of products or materials;

(b) an institution of higher education; or

(c) a technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

(4) This section does not apply to a demand letter or civil action that includes a claim for relief arising under 35 U.S.C. 271(e)(2).

Section 3. Remedies for bad faith assertion of patent right. (1) The attorney general may enforce [sections 1 through 4] and conduct civil investigations and bring civil actions for violations of [sections 1 through 4].

(2) In an action brought by the attorney general under [sections 1 through 4], the court may award or impose any relief available under [section 4].

(3) An intended recipient or affiliated person may bring a cause of action for a violation of [sections 1 through 4] and may seek relief provided for in [section 4].

(4) In addition to the relief provided for in [section 4], upon a motion by the attorney general or a party bringing a claim pursuant to subsection (3) and a finding by the court that there is a reasonable likelihood that a person violated [section 2], the court may require the person to post a bond in an amount equal to a good faith estimate of the costs to litigate a claim and amounts reasonably likely to be recovered if an action were to be brought pursuant to this section. A hearing must be held upon request of any party.

Section 4. Damages. A court may award the following relief to a plaintiff who prevails in an action brought pursuant to [sections 1 through 4]:

- (1) compensatory damages;
- (2) costs and fees, including reasonable attorney fees; and
- (3) punitive damages in an amount equal to three times the total of compensatory damages and costs and fees.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 13, and the provisions of Title 30, chapter 13, apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0039, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2015.

Speaker of the House

Signed this _____ day
of _____, 2015.

SENATE BILL NO. 39
INTRODUCED BY C. SMITH
BY REQUEST OF THE DEPARTMENT OF JUSTICE

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REMEDIES AND DAMAGES AVAILABLE FOR THE OFFENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE
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