



DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

MEASURE: SB 1540A
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SUBMITTED BY: Knott

MEMORANDUM

DATE: February 20, 2014

TO: Honorable Jeff Barker, Chair
House Judiciary Committee, Members

FROM: Aaron Knott, Legislative Director

Tim Nord, Assistant Attorney-in-Charge
Financial Fraud/Consumer Protection

SUBJECT: SB 1540

RECOMMENDED ACTION

This testimony is presented in support of SB 1540. We recommend that the Committee approve SB 1540 with the -4 Amendments incorporated with a do pass recommendation.

BACKGROUND ON THE UNLAWFUL TRADE PRACTICES ACT

- The Unlawful Trade Practices Act (UTPA) was passed in 1971 and amended in 1977.
 - The UTPA was based on a model consumer protection law, the “Uniform Deceptive Trade Practices Act”, drafted in 1964 by the National Conference of Commissioners on Uniform State Laws.
 - In 1966, the Federal Trade Commission urged states to adopt legislation to prevent “unfair methods of competition and unfair or deceptive acts or practices in commerce,” such as the model law.
 - The vast majority of states adopted “baby FTC Acts” similar to Section 5(a) of the FTC Act, which declares “unfair or deceptive acts or practices” to be unlawful. Additional changes have been made since to expand the “laundry list” of conduct covered by the UTPA.
- The UTPA protects both consumers and honest businesses by promoting a level playing field and a fair marketplace.

- The Attorney General has investigated, negotiated settlements and litigated violations of the UTPA in many different industries. Targets of enforcement actions run the range from telecommunications providers to lenders, banks, debt relief service providers, to major drug and food manufacturers, and motor vehicle dealers to internet and telemarketing sales. The Attorney General also uses the UTPA to attack scams targeting older Oregonians and other vulnerable populations.
- These types of investigations and enforcement actions brought to protect Oregon consumers also assist law-abiding businesses to stay competitive in a free and fair marketplace. In limited circumstances, the UTPA authorizes the Attorney General to bring enforcement actions that directly benefit businesses. For example, the Attorney General has prosecuted companies for sending local businesses simulated invoices for unordered or undelivered office goods and supplies, often following a deceptive telemarketing solicitation.

SB 1540 BAD FAITH PATENT ASSERTION AS UNLAWFUL TRADE PRACTICE

- Currently, the UTPA does not specifically address conduct arising from demands based upon patent rights. The UTPA's more general provisions may not have application as demands or allegations of patent infringement are often directed towards businesses. SB 1540 prohibits persons, and makes unlawful under the UTPA, demands upon Oregon recipients, if the person makes a bad faith demand or communication that the recipient has infringed or violated rights that the person has or controls under a patent.
- Prosecuting attorneys and the Attorney General are authorized to investigate and seek to enjoin such conduct as an unlawful trade practice under ORS 646.632. The Attorney General is provided authority to create rules to further define conduct evidencing either good or bad faith in alleging, asserting or claiming an infringement in Oregon.
- Private parties are authorized to bring an action under ORS 646.638.

HOW SB 1540 WILL PROTECT OREGON BUSINESSES AND CONSUMERS FROM UNSUPPORTED DEMANDS

- This bill requires persons seeking to enforce patent rights to do a reasonable amount of due diligence before making a demand or communication and to provide basic information to the recipient such as the patent number, current and accurate contact information for the patentee or assignee, and a description of the facts sufficient to permit a person to understand the basis of the demand.
- The bill also makes it clear that a person acts in good faith if the person follows reasonable steps to confirm the asserted infringement and provides relevant information to inform the recipient of the person's basis for the patent rights. This is particular true if the person is the original inventor, or previously has successfully enforced the rights under the patent.

- SB 1540 is only intended to prohibit bad faith or abusive practices of entities when making patent infringement claims and threats of litigation to extort money from businesses, nonprofits and government entities; it is not intended to allow anyone to avoid lawful obligations or to otherwise determine patent rights.
- SB 1540 provides recipients with basic information about the patent so they can identify and verify the legitimacy of the entity making the demands.
- SB 1540 can be enforced by the Attorney General or an Oregon recipient can bring a private right of action.

THERE IS NO KNOWN FISCAL IMPACT FOR DEPARTMENT OF JUSTICE

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