

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	5 - 0 - 0
Yeas:	Close, Dembrow, Kruse, Roblan, Prozanski
Nays:	0
Exc.:	0
Prepared By:	Channa Newell, Counsel
Meeting Dates:	2/12

WHAT THE MEASURE DOES: Prohibits bad faith claims of patent infringement. Allows recipient of claim to bring action under Unlawful Trade Practices Act. Permits Attorney General to investigate bad faith claims and specifies acts or omission that court may consider in finding bad faith claim. Specifies acts that evidence infringement claim made in good faith. Becomes operative 91 days after effective date. Declares emergency; effective on passage.

ISSUES DISCUSSED:

- High costs of patent litigation
- Operations of patent aggregating entities
- Attorney ethical standards in bringing bad faith claims
- Ability of Attorney General to investigate claims
- Unlikely to be pre-empted by federal jurisdiction

EFFECT OF COMMITTEE AMENDMENT: Expands recipients to include those doing business in state. Changes mandatory action by Attorney General to permissive action. Clarifies court's role in determining bad faith claim. Allows recipient to bring action under Unlawful Trade Practices Act without Attorney General's finding of bad faith.

BACKGROUND: Article One, Section 8(8) of the U.S. Constitution states that "Congress shall have power to...promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Patent infringement is subject to federal jurisdiction and is litigated in federal courts, but states may pass laws dealing with aspects of patent claims, so long as they do not conflict with the goals and objectives of federal patent law.

Senate Bill 1540-A prohibits claiming a bad faith patent infringement and allows a person who has received a bad faith claim to bring an action under the Unlawful Trade Practices Act. It also allows a prosecuting attorney to investigate the claims and gives directions to the court on factors to consider in bad-faith claim determinations.