

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5306-03
Bill No.: SCS for SB 706
Subject: Attorney General; Consumer Protection; Courts; Federal - State Relations
Type: Original
Date: March 31, 2014

Bill Summary: This proposal prohibits bad faith assertions of patent infringement.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(\$73,720)	(\$79,101)	(\$80,070)
Total Estimated Net Effect on General Revenue Fund	(\$73,720)	(\$79,101)	(\$80,070)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	1	1	1
Total Estimated Net Effect on FTE	1	1	1

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of the Attorney General (AGO)** assume this proposal would make it unlawful to make a bad faith assertion of patent infringement. In addition to creating a private cause of action, the proposal authorizes the AGO to investigate and prosecute such actions. In the AGO's experience, bad faith patent assertions are a common complaint, the instance of which has been on the rise in recent years. The AGO therefore anticipates that, although the exact number of cases would be unknown, there could be a significant number of new cases that it would handle as a result of this proposal. In addition, the proposal sets forth numerous factors to be considered in any case brought under the new provisions. The AGO therefore anticipates that such cases would require significant investigation and detailed preparation for litigation. Accordingly, while the precise fiscal impact is unknown, the AGO estimates that it would require at least an additional 1 FTE (Assistant Attorney General I). The AGO would seek additional appropriation for this purpose. While the AGO currently assumes that other costs and staffing needs, such as investigators and administrative assistants, could be absorbed with existing resources, the AGO may seek further additional appropriations if the workload created by this proposal necessitates additional resources.

In response to a previous version, officials from the **Office of the State Treasurer** assumed the proposal would not fiscally impact their agency.

Officials from the **Office of the State Courts Administrator (CTS)** would not anticipate a fiscal impact in excess of \$100,000.

Oversight assumes the CTS could absorb any costs arising from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE FUND			
<u>Costs - Office of the Attorney General</u>			
Personal Service	(\$36,667)	(\$44,440)	(\$44,884)
Fringe Benefits	(\$18,702)	(\$22,667)	(\$22,893)
Equipment and Expense	<u>(\$18,351)</u>	<u>(\$11,994)</u>	<u>(\$12,293)</u>
<u>Total Costs - AGO</u>	<u>(\$73,720)</u>	<u>(\$79,101)</u>	<u>(\$80,070)</u>
FTE Change - AGO	1.0 FTE	1.0 FTE	1.0 FTE
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	 <u>(\$73,720)</u>	 <u>(\$79,101)</u>	 <u>(\$80,070)</u>
 Estimated Net FTE Change for General Revenue Fund	 1 FTE	 1 FTE	 1 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2015 (10 Mo.)	 FY 2016	 FY 2017
	 <u>\$0</u>	 <u>\$0</u>	 <u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal prohibits bad faith assertions of patent infringement. This proposal creates a nine factor test that a court shall consider when determining if a person has made a bad faith assertion of patent infringement. Additionally, this proposal creates a six factor test that the court shall consider as evidence that a person has not made a bad faith assertion of patent infringement. If a person believes that they have been a target of a bad faith assertion of patent infringement upon receiving a demand letter, the person shall have a private right to a cause of action as set forth in this proposal. Upon a finding by a court that a person has made a bad faith assertion of patent infringement, the court may increase the monetary award to the target as set forth in this proposal.

This proposal allows the Attorney General to investigate, restrain, and prosecute bad faith assertions of patent infringement claims. Any monetary awards recovered by the Attorney

FISCAL DESCRIPTION (continued)

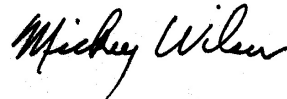
General shall be credited to the Antitrust Revolving Fund for the payments of expenses incurred by the Attorney General in the course of investigation, prosecution, or enforcement of such patent infringement claims.

This proposal shall not be construed to limit the rights and remedies available to any person with regard to bad faith assertions of patent infringement.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Office of the State Courts Administrator
Office of the State Treasurer



Mickey Wilson, CPA
Director
March 31, 2014

Ross Strobe
Assistant Director
March 31, 2014