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 1                    A bill to be entitled
 2         An act relating to patent infringement; creating part
 3         VII of ch. 501, F.S., entitled the "Patent Troll
 4         Prevention Act"; creating s. 501.991, F.S.; providing
 5         legislative intent; creating s. 501.992, F.S.;
 6         defining terms; creating s. 501.993, F.S.; prohibiting
 7         bad faith assertions of patent infringement from being
 8         made; providing factors that a court may consider when
 9         determining whether an allegation was or was not made
10         in bad faith; creating s. 501.994, F.S.; authorizing a
11         court to require a patent infringement plaintiff to
12         post a bond under certain circumstances; limiting the
13         bond amount; authorizing the court to waive the bond
14         requirement in certain circumstances; creating s.
15         501.995, F.S.; authorizing private rights of action
16         for violations of this part; authorizing the court to
17         award certain relief to prevailing plaintiffs;
18         creating s. 501.996, F.S.; requiring a bad faith
19         assertion of patent infringement to be treated as an
20         unfair or deceptive trade practice; creating s.
21         501.997, F.S.; providing exemptions; providing an
22         effective date.
23
24    Be It Enacted by the Legislature of the State of Florida:
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26         Section 1.  Part VII of chapter 501, Florida Statutes,
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27 consisting of ss. 501.991-501.997, Florida Statutes, is created

28 and is entitled the "Patent Troll Prevention Act."

29   Section 2. Section 501.991, Florida Statutes, is created

30 to read:

31   501.991 Legislative intent.—

32   (1) The Legislature recognizes that it is preempted from

33 passing any law that conflicts with federal patent law. However,

34 the Legislature recognizes that the state is dedicated to

35 building an entrepreneurial and business-friendly economy where

36 businesses and consumers alike are protected from abuse and

37 fraud. This includes protection from abusive and bad faith

38 demands and litigation.

39   (2) Patents encourage research, development, and

40 innovation. Patent holders have a legitimate right to enforce

41 their patents. The Legislature does not wish to interfere with

42 good faith patent litigation or the good faith enforcement of

43 patents. However, the Legislature recognizes a growing issue:

44 the frivolous filing of bad faith patent claims that have led to

45 technical, complex, and especially expensive litigation.

46   (3) The expense of patent litigation, which may cost

47 millions of dollars, can be a significant burden on companies

48 and small businesses. Not only do bad faith patent infringement

49 claims impose undue burdens on individual businesses, they

50 undermine the state's effort to attract and nurture

51 technological innovations. Funds spent to help avoid the threat

52 of bad faith litigation are no longer available for serving

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53 communities through investing in producing new products, helping

54 businesses expand, or hiring new workers. The Legislature wishes

55 to help its businesses avoid these costs by encouraging good

56 faith assertions of patent infringement and the expeditious and

57 efficient resolution of patent claims.

58   Section 3. Section 501.992, Florida Statutes, is created

59 to read:

60   501.992 Definitions.—As used in this part, the term:

61   (1) "Demand letter" means a letter, e-mail, or other

62 communication asserting or claiming that a person has engaged in

63 patent infringement.

64   (2) "Institution of higher education" means an educational

65 institution as defined in 20 U.S.C. s. 1001(a).

66   (3) "Target" means a person, including the person's

67 customers, distributors, or agents, residing in, incorporated

68 in, or organized under the laws of this state which:

69   (a) Has received a demand letter or against whom an

70 assertion or allegation of patent infringement has been made;

71   (b) Has been threatened with litigation or against whom a

72 lawsuit has been filed alleging patent infringement; or

73   (c) Whose customers have received a demand letter

74 asserting that the person's product, service, or technology has

75 infringed upon a patent.

76   Section 4. Section 501.993, Florida Statutes, is created

77 to read:

78   501.993 Bad faith assertions of patent infringement.—A

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79 person may not make a bad faith assertion of patent
80 infringement.
81   (1) A court may consider the following factors as evidence
82 that a person has made a bad faith assertion of patent
83 infringement:
84   (a) The demand letter does not contain the following
85 information:
86   1. The patent number;
87   2. The name and address of the patent owner and assignee,
88 if any; and
89   3. Factual allegations concerning the specific areas in
90 which the target's products, services, or technology infringe or
91 are covered by the claims in the patent.
92   (b) Before sending the demand letter, the person failed to
93 conduct an analysis comparing the claims in the patent to the
94 target's products, services, or technology, or the analysis did
95 not identify specific areas in which the target's products,
96 services, and technology were covered by the claims of the
97 patent.
98   (c) The demand letter lacked the information listed under
99 paragraph (a), the target requested the information, and the
100 person failed to provide the information within a reasonable
101 period of time.
102   (d) The demand letter requested payment of a license fee
103 or response within an unreasonable period of time.
104   (e) The person offered to license the patent for an amount

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105 that is not based on a reasonable estimate of the value of the
106 license.
107   (f) The claim or assertion of patent infringement is
108 unenforceable, and the person knew, or should have known, that
109 the claim or assertion was unenforceable.
110   (g) The claim or assertion of patent infringement is
111 deceptive.
112   (h) The person, including its subsidiaries or affiliates,
113 has previously filed or threatened to file one or more lawsuits
114 based on the same or a similar claim of patent infringement and:
115   1. The threats or lawsuits lacked the information listed
116 under paragraph (a); or
117   2. The person sued to enforce the claim of patent
118 infringement and a court found the claim to be meritless.
119   (i) Any other factor the court finds relevant.
120   (2) A court may consider the following factors as evidence
121 that a person has not made a bad faith assertion of patent
122 infringement:
123   (a) The demand letter contained the information listed
124 under paragraph (1)(a).
125   (b) The demand letter did not contain the information
126 listed under paragraph (1)(a), the target requested the
127 information, and the person provided the information within a
128 reasonable period of time.
129   (c) The person engaged in a good faith effort to establish
130 that the target has infringed the patent and negotiated an

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131 appropriate remedy.

132   (d) The person made a substantial investment in the use of

133 the patented invention or discovery or in a product or sale of a

134 product or item covered by the patent.

135   (e) The person is the inventor or joint inventor of the

136 patented invention or discovery, or in the case of a patent

137 filed by and awarded to an assignee of the original inventor or

138 joint inventors, is the original assignee.

139   (f) The person has:

140   1. Demonstrated good faith business practices in previous

141 efforts to enforce the patent, or a substantially similar

142 patent; or

143   2. Successfully enforced the patent, or a substantially

144 similar patent, through litigation.

145   (g) Any other factor the court finds relevant.

146   Section 5. Section 501.994, Florida Statutes, is created

147 to read:

148   501.994 Bond.—If a person initiates a proceeding against a

149 target in a court of competent jurisdiction, the target may move

150 that the proceeding involves a bad faith assertion of patent

151 infringement in violation of this part and request that the

152 court issue a protective order. After the motion, and if the

153 court finds that the target has established a reasonable

154 likelihood that the plaintiff has made a bad faith assertion of

155 patent infringement, the court must require the plaintiff to

156 post a bond in an amount equal to the lesser of $250,000 or a

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157 good faith estimate of the target's expense of litigation,

158 including an estimate of reasonable attorney fees, conditioned

159 on payment of any amount finally determined to be due to the

160 target. The court shall hold a hearing at either party's

161 request. A court may waive the bond requirement for good cause

162 shown or if it finds the plaintiff has available assets equal to

163 the amount of the proposed bond.

164   Section 6. Section 501.995, Florida Statutes, is created

165 to read:

166   501.995 Private right of action.—A person aggrieved by a

167 violation of this part may bring an action in a court of

168 competent jurisdiction. A court may award the following remedies

169 to a prevailing plaintiff in an action brought pursuant to this

170 section:

171   (1) Equitable relief;

172   (2) Damages;

173   (3) Costs and fees, including reasonable attorney fees;

174 and

175   (4) Punitive damages in an amount equal to $50,000 or

176 three times the total damages, costs, and fees, whichever is

177 greater.

178   Section 7. Section 501.996, Florida Statutes, is created

179 to read:

180   501.996 Enforcement.—A violation of this part is an unfair

181 or deceptive trade practice in any action brought by an

182 enforcing authority pursuant to s. 501.207. As used in this

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183 section, the term "enforcing authority" has the same meaning as

184 provided in s. 501.203.

185   Section 8. Section 501.997, Florida Statutes, is created

186 to read:

187   501.997 Exemptions.—This part does not apply to an

188 institution of higher education, to a technology transfer

189 organization owned by or affiliated with an institution of

190 higher education, or to a demand letter or an assertion of

191 patent infringement that includes a claim for relief arising

192 under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

193   Section 9. This act shall take effect upon becoming a law.

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