



317938

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: NC/2R

.

04/22/2015 03:02 PM

.

.

Senator Simmons moved the following:

Senate Amendment (with title amendment)

Delete lines 213 - 523

and insert:

written communication asserting or claiming that a person has engaged in patent infringement.

(2) "Institution of higher education" means an educational institution as defined in 20 U.S.C. s. 1001(a).

(3) "Target" means a person residing in, incorporated in, or organized under the laws of this state who purchases, rents, leases, or otherwise obtains a product or service in the



317938

12 commercial market which is not for resale in the commercial
13 market and who:

14 (a) Has received a demand letter or against whom a written
15 assertion or allegation of patent infringement has been made; or

16 (b) Has been threatened in writing with litigation or
17 against whom a lawsuit has been filed alleging patent
18 infringement.

19 Section 9. Section 501.993, Florida Statutes, is created to
20 read:

21 501.993 Bad faith assertions of patent infringement.—A
22 person may not make a bad faith assertion of patent
23 infringement.

24 (1) A court may consider the following factors as evidence
25 that a person has made a bad faith assertion of patent
26 infringement:

27 (a) The demand letter does not contain the following
28 information:

29 1. The patent number;

30 2. The name and address of the patent owner and assignee,
31 if any; and

32 3. Factual allegations concerning the specific areas in
33 which the target's products, services, or technology infringe or
34 are covered by the claims in the patent.

35 (b) Before sending the demand letter, the person failed to
36 conduct an analysis comparing the claims in the patent to the
37 target's products, services, or technology, or the analysis did
38 not identify specific areas in which the target's products,
39 services, and technology were covered by the claims of the
40 patent.



317938

41 (c) The demand letter lacked the information listed under
42 paragraph (a), the target requested the information, and the
43 person failed to provide the information within a reasonable
44 period.

45 (d) The demand letter requested payment of a license fee or
46 response within an unreasonable period.

47 (e) The person offered to license the patent for an amount
48 that is not based on a reasonable estimate of the value of the
49 license.

50 (f) The claim or assertion of patent infringement is
51 unenforceable, and the person knew, or should have known, that
52 the claim or assertion was unenforceable.

53 (g) The claim or assertion of patent infringement is
54 deceptive.

55 (h) The person, including its subsidiaries or affiliates,
56 has previously filed or threatened to file one or more lawsuits
57 based on the same or a similar claim of patent infringement and:

58 1. The threats or lawsuits lacked the information listed
59 under paragraph (a); or

60 2. The person sued to enforce the claim of patent
61 infringement and a court found the claim to be meritless.

62 (i) Any other factor the court finds relevant.

63 (2) A court may consider the following factors as evidence
64 that a person has not made a bad faith assertion of patent
65 infringement:

66 (a) The demand letter contained the information listed
67 under paragraph (1) (a).

68 (b) The demand letter did not contain the information
69 listed under paragraph (1) (a), the target requested the



317938

70 information, and the person provided the information within a
71 reasonable period.

72 (c) The person engaged in a good faith effort to establish
73 that the target has infringed the patent and negotiated an
74 appropriate remedy.

75 (d) The person made a substantial investment in the use of
76 the patented invention or discovery or in a product or sale of a
77 product or item covered by the patent.

78 (e) The person is the inventor or joint inventor of the
79 patented invention or discovery, or in the case of a patent
80 filed by and awarded to an assignee of the original inventor or
81 joint inventors, is the original assignee.

82 (f) The person has:

83 1. Demonstrated good faith business practices in previous
84 efforts to enforce the patent, or a substantially similar
85 patent; or

86 2. Successfully enforced the patent, or a substantially
87 similar patent, through litigation.

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

89 Section 10. Section 501.994, Florida Statutes, is created
90 to read:

91 501.994 Bond.—If a person initiates a proceeding against a
92 target in a court of competent jurisdiction, the target may move
93 that the proceeding involves a bad faith assertion of patent
94 infringement in violation of this part and request that the
95 court issue a protective order. After the motion, and if the
96 court finds that the target has established a reasonable
97 likelihood that the plaintiff has made a bad faith assertion of
98 patent infringement, the court must require the plaintiff to



317938

99 post a bond in an amount equal to the lesser of \$250,000 or a
100 good faith estimate of the target's expense of litigation,
101 including an estimate of reasonable attorney fees, conditioned
102 on payment of any amount finally determined to be due to the
103 target. The court shall hold a hearing at either party's
104 request. A court may waive the bond requirement for good cause
105 shown or if it finds the plaintiff has available assets equal to
106 the amount of the proposed bond.

107 Section 11. Section 501.995, Florida Statutes, is created
108 to read:

109 501.995 Private right of action.—A person aggrieved by a
110 violation of this part may bring an action in a court of
111 competent jurisdiction. A court may award the following remedies
112 to a prevailing plaintiff in an action brought pursuant to this
113 section:

- 114 (1) Equitable relief;
115 (2) Damages;
116 (3) Costs and fees, including reasonable attorney fees; and
117 (4) Punitive damages in an amount equal to \$50,000 or three
118 times the total damages, costs, and fees, whichever is greater.

119 Section 12. Section 501.996, Florida Statutes, is created
120 to read:

121 501.996 Enforcement.—A violation of this part is an unfair
122 or deceptive trade practice under part II of this chapter.

123 Section 13. Section 501.997, Florida Statutes, is created
124 to read:

125 501.997 Exemptions.—This part does not apply to an
126 institution of higher education, to a technology transfer
127 organization owned by or affiliated with an institution of



317938

128 higher education, or to a demand letter or an assertion of
129 patent infringement that includes a claim for relief arising
130 under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

131 Section 14. Subsections (3) and (6) of section 960.03,
132 Florida Statutes, are amended to read:

133 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
134 960.01-960.28, unless the context otherwise requires, the term:

135 (3) "Crime" means:

136 (a) A felony or misdemeanor offense committed by an adult
137 or a juvenile which results in physical injury or death, a
138 forcible felony committed by an adult or juvenile which directly
139 results in psychiatric or psychological injury, or a felony or
140 misdemeanor offense of child abuse committed by an adult or a
141 juvenile which results in a mental injury, as defined in s.
142 827.03, to a person younger than 18 years of age who was not
143 physically injured by the criminal act. The mental injury to the
144 minor must be verified by a psychologist licensed under chapter
145 490, by a physician licensed in this state under chapter 458 or
146 chapter 459 who has completed an accredited residency in
147 psychiatry, or by a physician who has obtained certification as
148 an expert witness pursuant to s. 458.3175. The term also
149 includes a criminal act that is committed within this state but
150 that falls exclusively within federal jurisdiction.

151 (b) A violation of s. 316.027(2), s. 316.193, s. 316.1935
152 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s.
153 860.13(1)(a) which results in physical injury or death.

154 (c) ~~;~~however, An act involving the operation of a motor
155 vehicle, boat, or aircraft which results in another person's
156 injury or death that is intentionally inflicted through the use



317938

157 of the vehicle, boat, or aircraft; however, no other act
158 involving the operation of a motor vehicle, boat, or aircraft
159 constitutes a crime for purposes of this chapter ~~does not~~
160 ~~constitute a crime for the purpose of this chapter unless the~~
161 ~~injury or death was intentionally inflicted through the use of~~
162 ~~the vehicle, boat, or aircraft.~~

163 (d) ~~(e)~~ A criminal act committed outside this state against
164 a resident of this state which would have been compensable if it
165 had occurred in this state and which occurred in a jurisdiction
166 that does not have an eligible crime victim compensation program
167 as the term is defined in the federal Victims of Crime Act of
168 1984.

169 (e) ~~(d)~~ A violation of s. 827.071, s. 847.0135, s. 847.0137,
170 or s. 847.0138, related to online sexual exploitation and child
171 pornography.

172 (6) "Disabled adult" means a person 18 years of age or
173 older who suffers from a condition of physical or mental
174 incapacitation due to a developmental disability, ~~or~~ organic
175 brain damage, or mental illness or who has one or more physical
176 or mental limitations that restrict the person's ability to
177 perform the normal activities of daily living.

178 Section 15. Subsection (6) of section 960.13, Florida
179 Statutes, is amended to read:

180 960.13 Awards.—

181 (6) Any award made pursuant to this chapter, except an
182 award for loss of support or catastrophic injury, shall be
183 reduced by the amount of any payments or services received or to
184 be received by the claimant as a result of the injury or death:

185 (a) From or on behalf of the person who committed the



317938

186 crime; provided, however, that a restitution award ordered by a
187 court to be paid to the claimant by the person who committed the
188 crime shall not reduce any award made pursuant to this chapter
189 unless it appears to the department that the claimant will be
190 unjustly enriched thereby.

191 (b) From any other public or private source or provider,
192 including, but not limited to, an award of workers' compensation
193 pursuant to chapter 440.

194 (c) From agencies mandated by other Florida statutes to
195 provide or pay for services, except as provided in s. 960.28.

196 (d) From an emergency award under s. 960.12.

197 Section 16. Section 960.195, Florida Statutes, is amended
198 to read:

199 960.195 Awards to elderly persons or disabled adults for
200 property loss.—

201 (1) Notwithstanding the criteria in s. 960.13, for crime
202 victim compensation awards, the department may award a maximum
203 of \$500 on any one claim and a lifetime maximum of \$1,000 on all
204 claims to elderly persons or disabled adults who suffer a
205 property loss that causes a substantial diminution in their
206 quality of life when:

207 (a)(1) There is proof that a criminal or delinquent act was
208 committed;

209 (b)(2) The criminal or delinquent act is reported to law
210 enforcement authorities within 72 hours, unless the department,
211 for good cause shown, finds the delay to have been justified;

212 ~~(3) The victim cooperates with law enforcement authorities~~
213 ~~in the investigation of the criminal or delinquent act;~~

214 (c)(4) There is proof that the tangible personal property



317938

215 in question belonged to the claimant;

216 (d) ~~(5)~~ The claimant did not contribute to the criminal or
217 delinquent act;

218 (e) ~~(6)~~ There is no other source of reimbursement or
219 indemnification available to the claimant; and

220 (f) ~~(7)~~ The claimant would not be able to replace the
221 tangible personal property in question without incurring a
222 serious financial hardship.

223 (2) The department may deny, reduce, or withdraw any award
224 under subsection (1) upon finding that any claimant or award
225 recipient has not duly cooperated with the state attorney, all
226 law enforcement agencies, and the department.

227 Section 17. Section 960.196, Florida Statutes, is created
228 to read:

229 960.196 Relocation assistance for victims of human
230 trafficking.-

231 (1) Notwithstanding the criteria specified in ss. 960.07(2)
232 and 960.13 for crime victim compensation awards, the department
233 may award a one-time payment of up to \$1,500 for any one claim
234 and a lifetime maximum of \$3,000 to a victim of human
235 trafficking who needs urgent assistance to escape from an unsafe
236 environment directly related to the human trafficking offense.

237 (2) In order for an award to be granted to a victim for
238 relocation assistance:

239 (a) There must be proof that a human trafficking offense,
240 as described in s. 787.06(3)(b), (d), (f), or (g), was
241 committed.

242 (b) The crime must be reported to the proper authorities
243 and the claim must be filed within 1 year, or 2 years with good



317938

244 cause, after the date of the last human trafficking offense, as
245 described in s. 787.06(3)(b), (d), (f), or (g). In a case that
246 exceeds the 2-year requirement due to an active and ongoing
247 investigation, a state attorney, statewide prosecutor, or
248 federal prosecutor may certify in writing a human trafficking
249 victim's need to relocate from an unsafe environment due to the
250 threat of future violence which is directly related to the human
251 trafficking offense.

252 (c) The victim's need must be certified by a certified
253 domestic violence or rape crisis center in this state, except as
254 provided in paragraph (b). The center's certification must
255 assert that the victim is cooperating with the proper
256 authorities and must include documentation that the victim has
257 developed a safety plan.

258 (3) Relocation payments for a human trafficking claim shall
259 be denied if the department has previously approved or paid out
260 a domestic violence or sexual battery relocation claim under s.
261 960.198 or s. 960.199 to the same victim regarding the same
262 incident.

263 Section 18. Subsection (3) of section 960.198, Florida
264 Statutes, is amended to read:

265 960.198 Relocation assistance for victims of domestic
266 violence.—

267 (3) Relocation payments for a domestic violence claim shall
268 be denied if the department has previously approved or paid out
269 a human trafficking or sexual battery relocation claim under s.
270 960.196 or s. 960.199 to the same victim regarding the same
271 incident.

272 Section 19. Section 960.199, Florida Statutes, is amended



317938

273 to read:

274 960.199 Relocation assistance for victims of sexual battery
275 ~~or human trafficking.~~

276 (1) The department may award a one-time payment of up to
277 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a
278 victim of sexual battery, as defined in s. 794.011, ~~or a victim~~
279 ~~of human trafficking, as described in s. 787.06(3)(b), (d), (f),~~
280 ~~or (g),~~ who needs relocation assistance.

281 (2) In order for an award to be granted to a victim for
282 relocation assistance:

283 (a) There must be proof that a sexual battery offense ~~or~~
284 ~~human trafficking offense, as described in s. 787.06(3)(b), (d),~~
285 ~~(f), or (g),~~ was committed.

286 (b) The sexual battery offense ~~or human trafficking~~
287 ~~offense, as defined in s. 787.06(3)(b), (d), (f), or (g),~~ must
288 be reported to the proper authorities.

289 (c) The victim's need for assistance must be certified by a
290 certified rape crisis center in this state ~~or by the state~~
291 ~~attorney or statewide prosecutor having jurisdiction over the~~
292 ~~offense. A victim of human trafficking's need for assistance may~~
293 ~~also be certified by a certified domestic violence center in~~
294 ~~this state.~~

295 (d) The center's certification must assert that the victim
296 is cooperating with law enforcement officials, if applicable,
297 and must include documentation that the victim has developed a
298 safety plan. ~~If the victim seeking relocation assistance is a~~
299 ~~victim of a human trafficking offense as described in s.~~
300 ~~787.06(3)(b), (d), (f), or (g), the certified rape crisis~~
301 ~~center's or certified domestic violence center's certification~~



317938

302 ~~must include, if applicable, approval of the state attorney or~~
303 ~~statewide prosecutor attesting that the victim is cooperating~~
304 ~~with law enforcement officials.~~

305 (e) ~~The act of sexual battery or human trafficking, as~~
306 ~~described in s. 787.06(3)(b), (d), (f), or (g),~~ must be
307 committed in the victim's place of residence or in a location
308 that would lead the victim to reasonably fear for his or her
309 continued safety in the place of residence.

310 (3) Relocation payments for a sexual battery ~~or human~~
311 ~~trafficking~~ claim under this section shall be denied if the
312 department has previously approved or paid out a human
313 trafficking or domestic violence relocation claim under s.
314 960.196 or s. 960.198 to the same victim regarding the same
315 incident.

316 Section 20. If any provision of this act or its application
317 to any person or circumstance is held invalid, the invalidity
318 does not affect other provisions or applications of the act
319 which can be given effect without the invalid provision or
320 application, and to this end the provisions of this act are
321 severable.

322
323 ===== T I T L E A M E N D M E N T =====

324 And the title is amended as follows:

325 Delete line 61

326 and insert:

327 trafficking victims; providing that the provisions of
328 this act are severable; providing an effective date.