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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/2R	.	Floor: SA1/C
04/22/2015 03:03 PM	.	04/24/2015 09:11 AM
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Senator Simmons moved the following:

**Senate Amendment (with title amendment)**

Delete lines 156 - 343  
and insert:

Section 6. The Division of Law Revision and Information is directed to create part VII of chapter 501, Florida Statutes, consisting of ss. 501.991-501.997, Florida Statutes, to be entitled the "Patent Troll Prevention Act."

Section 7. Section 501.991, Florida Statutes, is created to read:

501.991 Legislative intent.-



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12           (1) The Legislature recognizes that it is preempted from  
13 passing any law that conflicts with federal patent law. However,  
14 the Legislature recognizes that the state is dedicated to  
15 building an entrepreneurial and business-friendly economy where  
16 businesses and consumers alike are protected from abuse and  
17 fraud. This includes protection from abusive and bad faith  
18 demands and litigation.

19           (2) Patents encourage research, development, and  
20 innovation. Patent holders have a legitimate right to enforce  
21 their patents. The Legislature does not wish to interfere with  
22 good faith patent litigation or the good faith enforcement of  
23 patents. However, the Legislature recognizes a growing issue:  
24 the frivolous filing of bad faith patent claims that have led to  
25 technical, complex, and especially expensive litigation.

26           (3) The expense of patent litigation, which may cost  
27 millions of dollars, can be a significant burden on companies  
28 and small businesses. Not only do bad faith patent infringement  
29 claims impose undue burdens on individual businesses, they  
30 undermine the state's effort to attract and nurture  
31 technological innovations. Funds spent to help avoid the threat  
32 of bad faith litigation are no longer available for serving  
33 communities through investing in producing new products, helping  
34 businesses expand, or hiring new workers. The Legislature wishes  
35 to help businesses avoid these costs by encouraging good faith  
36 assertions of patent infringement and the expeditious and  
37 efficient resolution of patent claims.

38           Section 8. Section 501.992, Florida Statutes, is created to  
39 read:

40           501.992 Definitions.—As used in this part, the term:



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41 (1) "Demand letter" means a letter, e-mail, or other  
42 written communication asserting or claiming that a person has  
43 engaged in patent infringement.

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

46 (3) "Target" means a person residing in, incorporated in,  
47 or organized under the laws of this state who purchases, rents,  
48 leases, or otherwise obtains a product or service in the  
49 commercial market which is not for resale in the commercial  
50 market and who:

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

53 (b) Has been threatened in writing with litigation or  
54 against whom a lawsuit has been filed alleging patent  
55 infringement.

56 Section 9. Section 501.993, Florida Statutes, is created to  
57 read:

58 501.993 Bad faith assertions of patent infringement.—A  
59 person may not make a bad faith assertion of patent  
60 infringement.

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

64 (a) The demand letter does not contain the following  
65 information:

- 66 1. The patent number;  
67 2. The name and address of the patent owner and assignee,  
68 if any; and  
69 3. Factual allegations concerning the specific areas in



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70 which the target's products, services, or technology infringe or  
71 are covered by the claims in the patent.

72 (b) Before sending the demand letter, the person failed to  
73 conduct an analysis comparing the claims in the patent to the  
74 target's products, services, or technology, or the analysis did  
75 not identify specific areas in which the target's products,  
76 services, and technology were covered by the claims of the  
77 patent.

78 (c) The demand letter lacked the information listed under  
79 paragraph (a), the target requested the information, and the  
80 person failed to provide the information within a reasonable  
81 period.

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

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

87 (f) The claim or assertion of patent infringement is  
88 unenforceable, and the person knew, or should have known, that  
89 the claim or assertion was unenforceable.

90 (g) The claim or assertion of patent infringement is  
91 deceptive.

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

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

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



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

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

103           (a) The demand letter contained the information listed  
104 under paragraph (1) (a).

105           (b) The demand letter did not contain the information  
106 listed under paragraph (1) (a), the target requested the  
107 information, and the person provided the information within a  
108 reasonable period.

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

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

115           (e) The person is the inventor or joint inventor of the  
116 patented invention or discovery, or in the case of a patent  
117 filed by and awarded to an assignee of the original inventor or  
118 joint inventors, is the original assignee.

119           (f) The person has:

120           1. Demonstrated good faith business practices in previous  
121 efforts to enforce the patent, or a substantially similar  
122 patent; or

123           2. Successfully enforced the patent, or a substantially  
124 similar patent, through litigation.

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

126           Section 10. Section 501.994, Florida Statutes, is created  
127 to read:



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128           501.994 Bond.—If a person initiates a proceeding against a  
129 target in a court of competent jurisdiction, the target may move  
130 that the proceeding involves a bad faith assertion of patent  
131 infringement in violation of this part and request that the  
132 court issue a protective order. After the motion, and if the  
133 court finds that the target has established a reasonable  
134 likelihood that the plaintiff has made a bad faith assertion of  
135 patent infringement, the court must require the plaintiff to  
136 post a bond in an amount equal to the lesser of \$250,000 or a  
137 good faith estimate of the target’s expense of litigation,  
138 including an estimate of reasonable attorney fees, conditioned  
139 on payment of any amount finally determined to be due to the  
140 target. The court shall hold a hearing at either party’s  
141 request. A court may waive the bond requirement for good cause  
142 shown or if it finds the plaintiff has available assets equal to  
143 the amount of the proposed bond.

144           Section 11. Section 501.995, Florida Statutes, is created  
145 to read:

146           501.995 Private right of action.—A person aggrieved by a  
147 violation of this part may bring an action in a court of  
148 competent jurisdiction. A court may award the following remedies  
149 to a prevailing plaintiff in an action brought pursuant to this  
150 section:

- 151           (1) Equitable relief;
- 152           (2) Damages;
- 153           (3) Costs and fees, including reasonable attorney fees; and
- 154           (4) Punitive damages in an amount equal to \$50,000 or three  
155 times the total damages, costs, and fees, whichever is greater.

156           Section 12. Section 501.996, Florida Statutes, is created



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157 to read:

158 501.996 Enforcement.—A violation of this part is an unfair  
159 or deceptive trade practice under part II of this chapter.

160 Section 13. Section 501.997, Florida Statutes, is created  
161 to read:

162 501.997 Exemptions.—This part does not apply to an  
163 institution of higher education, to a technology transfer  
164 organization owned by or affiliated with an institution of  
165 higher education, or to a demand letter or an assertion of  
166 patent infringement that includes a claim for relief arising  
167 under 35 U.S.C. s. 271(e) (2) or 42 U.S.C. s. 262.

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

170 960.03 Definitions; ss. 960.01-960.28.—As used in ss.  
171 960.01-960.28, unless the context otherwise requires, the term:

172 (3) "Crime" means:

173 (a) A felony or misdemeanor offense committed by an adult  
174 or a juvenile which results in physical injury or death, a  
175 forcible felony committed by an adult or juvenile which directly  
176 results in psychiatric or psychological injury, or a felony or  
177 misdemeanor offense of child abuse committed by an adult or a  
178 juvenile which results in a mental injury, as defined in s.  
179 827.03, to a person younger than 18 years of age who was not  
180 physically injured by the criminal act. The mental injury to the  
181 minor must be verified by a psychologist licensed under chapter  
182 490, by a physician licensed in this state under chapter 458 or  
183 chapter 459 who has completed an accredited residency in  
184 psychiatry, or by a physician who has obtained certification as  
185 an expert witness pursuant to s. 458.3175. The term also



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186 includes a criminal act that is committed within this state but  
187 that falls exclusively within federal jurisdiction.

188 (b) A violation of s. 316.027(2), s. 316.193, s. 316.1935  
189 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s.  
190 860.13(1)(a) which results in physical injury or death.

191 (c) ~~however,~~ An act involving the operation of a motor  
192 vehicle, boat, or aircraft which results in another person's  
193 injury or death that is intentionally inflicted through the use  
194 of the vehicle, boat, or aircraft; however, no other act  
195 involving the operation of a motor vehicle, boat, or aircraft  
196 constitutes a crime for purposes of this chapter does not  
197 ~~constitute a crime for the purpose of this chapter unless the~~  
198 ~~injury or death was intentionally inflicted through the use of~~  
199 ~~the vehicle, boat, or aircraft.~~

200 (d) ~~(e)~~ A criminal act committed outside this state against  
201 a resident of this state which would have been compensable if it  
202 had occurred in this state and which occurred in a jurisdiction  
203 that does not have an eligible crime victim compensation program  
204 as the term is defined in the federal Victims of Crime Act of  
205 1984.

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

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





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

217 960.13 Awards.—

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

222 (a) From or on behalf of the person who committed the  
223 crime; provided, however, that a restitution award ordered by a  
224 court to be paid to the claimant by the person who committed the  
225 crime shall not reduce any award made pursuant to this chapter  
226 unless it appears to the department that the claimant will be  
227 unjustly enriched thereby.

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

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

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

234 Section 16. Section 960.195, Florida Statutes, is amended  
235 to read:

236 960.195 Awards to elderly persons or disabled adults for  
237 property loss.—

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



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244        (a) ~~(1)~~ There is proof that a criminal or delinquent act was  
245 committed;

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

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

251        (c) ~~(4)~~ There is proof that the tangible personal property  
252 in question belonged to the claimant;

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

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

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

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

264        Section 17. Section 960.196, Florida Statutes, is created  
265 to read:

266        960.196 Relocation assistance for victims of human  
267 trafficking.-

268        (1) Notwithstanding the criteria specified in ss. 960.07(2)  
269 and 960.13 for crime victim compensation awards, the department  
270 may award a one-time payment of up to \$1,500 for any one claim  
271 and a lifetime maximum of \$3,000 to a victim of human  
272 trafficking who needs urgent assistance to escape from an unsafe



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273 environment directly related to the human trafficking offense.

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

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

279 (b) The crime must be reported to the proper authorities  
280 and the claim must be filed within 1 year, or 2 years with good  
281 cause, after the date of the last human trafficking offense, as  
282 described in s. 787.06(3)(b), (d), (f), or (g). In a case that  
283 exceeds the 2-year requirement due to an active and ongoing  
284 investigation, a state attorney, statewide prosecutor, or  
285 federal prosecutor may certify in writing a human trafficking  
286 victim's need to relocate from an unsafe environment due to the  
287 threat of future violence which is directly related to the human  
288 trafficking offense.

289 (c) The victim's need must be certified by a certified  
290 domestic violence or rape crisis center in this state, except as  
291 provided in paragraph (b). The center's certification must  
292 assert that the victim is cooperating with the proper  
293 authorities and must include documentation that the victim has  
294 developed a safety plan.

295 (3) Relocation payments for a human trafficking claim shall  
296 be denied if the department has previously approved or paid out  
297 a domestic violence or sexual battery relocation claim under s.  
298 960.198 or s. 960.199 to the same victim regarding the same  
299 incident.

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



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302           960.198 Relocation assistance for victims of domestic  
303 violence.—

304           (3) Relocation payments for a domestic violence claim shall  
305 be denied if the department has previously approved or paid out  
306 a human trafficking or sexual battery relocation claim under s.  
307 960.196 or s. 960.199 to the same victim regarding the same  
308 incident.

309           Section 19. Section 960.199, Florida Statutes, is amended  
310 to read:

311           960.199 Relocation assistance for victims of sexual battery  
312 ~~or human trafficking.—~~

313           (1) The department may award a one-time payment of up to  
314 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a  
315 victim of sexual battery, as defined in s. 794.011, ~~or a victim~~  
316 ~~of human trafficking, as described in s. 787.06(3)(b), (d), (f),~~  
317 ~~or (g),~~ who needs relocation assistance.

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

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

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

326           (c) The victim's need for assistance must be certified by a  
327 certified rape crisis center in this state ~~or by the state~~  
328 ~~attorney or statewide prosecutor having jurisdiction over the~~  
329 ~~offense. A victim of human trafficking's need for assistance may~~  
330 ~~also be certified by a certified domestic violence center in~~



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331 ~~this state.~~

332 (d) The center's certification must assert that the victim  
333 is cooperating with law enforcement officials, if applicable,  
334 and must include documentation that the victim has developed a  
335 safety plan. ~~If the victim seeking relocation assistance is a~~  
336 ~~victim of a human trafficking offense as described in s.~~  
337 ~~787.06(3)(b), (d), (f), or (g), the certified rape crisis~~  
338 ~~center's or certified domestic violence center's certification~~  
339 ~~must include, if applicable, approval of the state attorney or~~  
340 ~~statewide prosecutor attesting that the victim is cooperating~~  
341 ~~with law enforcement officials.~~

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

347 (3) Relocation payments for a sexual battery ~~or human~~  
348 ~~trafficking~~ claim under this section shall be denied if the  
349 department has previously approved or paid out a human  
350 trafficking or domestic violence relocation claim under s.  
351 960.196 or s. 960.198 to the same victim regarding the same  
352 incident.

353 Section 20. If any provision of this act or its application  
354 to any person or circumstance is held invalid, the invalidity  
355 does not affect other provisions or applications of the act  
356 which can be given effect without the invalid provision or  
357 application, and to this end the provisions of this act are  
358 severable.

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360 ===== T I T L E A M E N D M E N T =====

361 And the title is amended as follows:

362 Delete lines 13 - 40

363 and insert:

364 providing a directive to the Division of Law Revision  
365 and Information; creating s. 501.991, F.S.; providing  
366 legislative intent; creating s. 501.992, F.S.;  
367 defining terms; creating s. 501.993, F.S.; prohibiting  
368 bad faith assertions of patent infringement from being  
369 made; providing factors that a court may consider when  
370 determining whether an allegation was or was not made  
371 in bad faith; creating s. 501.994, F.S.; authorizing a  
372 court to require a patent infringement plaintiff to  
373 post a bond under certain circumstances; limiting the  
374 bond amount; authorizing the court to waive the bond  
375 requirement in certain circumstances; creating s.  
376 501.995, F.S.; authorizing private rights of action  
377 for violations of this part; authorizing the court to  
378 award certain relief to prevailing plaintiffs;  
379 creating s. 501.996, F.S.; providing that a violation  
380 of part VII of ch. 501, F.S., is an unfair or  
381 deceptive trade practice; creating s. 501.997, F.S.;  
382 providing exemptions; amending s. 960.03, F.S.;  
383 revising the definition of the term "crime" for  
384 purposes of obtaining crime victim compensation from  
385 the department to include certain forcible felonies;  
386 revising provisions concerning acts involving the  
387 operation of a motor vehicle, boat, or aircraft;  
388 revising the definition of the term "disabled adult";



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389           correcting a cross-reference; amending s. 960.13,  
390           F.S.; exempting crime victim compensation awards for  
391           catastrophic injury from certain deductions; amending  
392           s. 960.195, F.S.; revising the maximum victim  
393           compensation amounts that the department may award to  
394           elderly persons or disabled adults who suffer a  
395           property loss that causes a substantial diminution in  
396           their quality of life in certain circumstances;  
397           revising the conditions under which elderly persons or  
398           disabled adults who suffer a property loss are  
399           eligible for an award; authorizing the department to  
400           deny, reduce, or withdraw a specified award upon  
401           finding that any claimant or award recipient has not  
402           duly cooperated with certain persons and entities;  
403           creating s. 960.196, F.S.; providing for relocation  
404           assistance for human trafficking victims; amending s.  
405           960.198, F.S.; prohibiting relocation assistance for a  
406           domestic violence claim if the victim has received  
407           previous relocation assistance for a human trafficking  
408           claim; amending s. 960.199, F.S.; deleting provisions  
409           relating to relocation assistance for human  
410           trafficking victims; providing that the provisions of  
411           this act are severable; providing an effective date.