

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4473-02
Bill No.: HCS for HB 1374
Subject: Courts; Civil Procedure; Business and Commerce
Type: Original
Date: February 20, 2014

Bill Summary: This proposal prohibits a person from making a bad faith assertion of patent infringement, lists evidence the court may consider, and provides remedies the court may award.

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 Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 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 FTE	1 FTE	1 FTE
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.

Officials at the **Office of the State Courts Administrator (CTS)** assume this proposal would not be in excess of \$100,000.

Oversight assumes that any costs from CTS relating to this proposal could be absorbed within their current appropriation level.

Officials at the **Office of Administration**, the **Office of the State Public Defender**, the **Department of Higher Education** and the **Department of Conservation** each assume no fiscal impact to their respective agencies from this proposal.

In response to a previous version, officials at the **Office of the State Treasurer** and the **Missouri Department of Transportation** each assume no fiscal impact to their respective agencies from this proposal.

Officials at the **University of Missouri System**, the **Missouri State University**, and the **Northwest Missouri State University** each assume no fiscal impact to their respective organizations from this proposal.

ASSUMPTION (continued)

In response to a previous version, officials at the **Lincoln University**, the **University of Central Missouri**, the **Linn State Technical College**, the **Missouri Western State University** and the **Missouri Southern State University** each assume no fiscal impact to their respective organizations from this proposal.

Officials at the the Office of Prosecution Services did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Kansas City Metro Community College, Moberly Area Community College, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College, Truman State University and the University of Missouri did not respond to **Oversight's** request for fiscal impact.

<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	(\$18,351)	(\$11,994)	(\$12,293)
<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 bill prohibits a person from making a bad faith assertion of patent infringement and specifies the factors the court may consider as evidence that a bad faith assertion has or has not been made. Where the court makes a finding that a target has established a reasonable likelihood that a bad faith assertion of patent infringement has been made, the court must require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered, conditioned upon payment of any amounts finally determined to be due to the target. A hearing must be held if either party requests one. No bond ordered under these provisions can exceed \$250,000. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown. The bill authorizes a target of bad faith assertion of patent infringement to bring a cause of action in circuit court and specifies the remedies available to a plaintiff who prevails in such an action. The Attorney General's authority to investigate, restrain, and prosecute civil actions under the Missouri anti-trust law applies to investigating and prosecuting actions brought under these provisions. Monetary awards or settlements recovered by the Attorney General, aside from awards to the target, may be credited to the antitrust revolving fund and be made available for the payment of all costs and expenses incurred by the Attorney General in investigation, prosecution, or enforcement of these provisions.

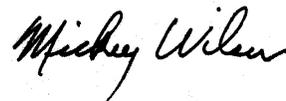
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration
Office of the State Courts Administrator
Office of the State Public Defender
Office of the State Treasurer
Missouri Department of Transportation
Department of Conservation
Northwest Missouri State University
Missouri Southern State University
Missouri Western State University
Missouri State University
Linn State Technical College
University of Central Missouri
University of Missouri System
Lincoln University
Department of Higher Education
Office of the Attorney General

Not Responding

Office of Prosecution Services



Mickey Wilson, CPA
Director
February 20, 2014

Ross Strobe
Assistant Director
February 20, 2014

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