



Sen. Daniel Biss

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LRB098 19175 OMW 56931 a

1 AMENDMENT TO SENATE BILL 3405

2 AMENDMENT NO. _____. Amend Senate Bill 3405 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by adding Section 2RRR as follows:

6 (815 ILCS 505/2RRR new)

7 Sec. 2RRR. Unfair or deceptive patent infringement demand
8 letters.

9 (a) As used in this Section:

10 "Affiliated person" means a person affiliated with the
11 intended recipient of a written or electronic communication.

12 "Intended recipient" means a consumer who purchases,
13 rents, leases, or otherwise obtains a product or service in the
14 commercial market that is, or later becomes, the subject of a
15 patent infringement allegation.

16 (b) It is an unlawful practice under this Act for a person,

1 in connection with the assertion of a United States patent, to
2 send or cause any person to send any written, including
3 electronic, communication that states that the intended
4 recipient or any affiliated person is infringing or has
5 infringed a patent and bears liability or owes compensation to
6 another person, if:

7 (1) the communication falsely threatens that
8 administrative or judicial relief will be sought if
9 compensation is not paid or the infringement issue is not
10 otherwise resolved;

11 (2) the communication falsely states that litigation
12 has been filed against the intended recipient or any
13 affiliated person;

14 (3) the assertions contained in the communication lack
15 a reasonable basis in fact or law because:

16 (A) the person asserting the patent is not a
17 person, or does not represent a person, with the
18 current right to license the patent to or enforce the
19 patent against the intended recipient or any
20 affiliated person;

21 (B) the communication seeks compensation for a
22 patent that has been held to be invalid or
23 unenforceable in a final, unappealable or unappealed,
24 judicial or administrative decision; or

25 (C) the communication seeks compensation on
26 account of activities undertaken after the patent has

1 expired; or

2 (4) the content of the communication fails to include
3 information necessary to inform an intended recipient or
4 any affiliated person about the patent assertion by failing
5 to include the following:

6 (A) the identity of the person asserting a right to
7 license the patent to or enforce the patent against the
8 intended recipient or any affiliated person;

9 (B) the patent issued by the United States Patent
10 and Trademark Office alleged to have been infringed;
11 and

12 (C) the factual allegations concerning the
13 specific areas in which the intended recipient's or
14 affiliated person's products, services, or technology
15 infringed the patent or are covered by the claims in
16 the patent.

17 (c) Nothing in this Section shall be construed to deem it
18 an unlawful practice for any person who owns or has the right
19 to license or enforce a patent to:

20 (1) advise others of that ownership or right of license
21 or enforcement;

22 (2) communicate to others that the patent is available
23 for license or sale;

24 (3) notify another of the infringement of the patent;

25 or

26 (4) seek compensation on account of past or present

1 infringement or for a license to the patent.

2 Section 99. Effective date. This Act takes effect January
3 1, 2015."