



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2691

by Rep. Peter Breen

SYNOPSIS AS INTRODUCED:

815 ILCS 505/2SSS

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that it is an unlawful practice to claim that another has infringed upon a copyright if the claim falsely threatens adverse administrative or judicial action, the assertions lack a reasonable basis in fact or law, the person making the assertion is not, or does not represent, a person with a current right to license the copyright, or the claim fails to make certain other disclosures. Provides that a person who sends certain written communications bears liability or owes compensation to another person if: (1) the communication falsely states that litigation has been filed against the intended recipient; or (2) the assertions contained in the communication lack a reasonable basis in fact or law because the communication seeks compensation for a copyright that has been held invalid or unenforceable in a final, unappealable or unappealed, judicial or administrative decision. Provides that nothing in the provisions shall be construed to deem it an unlawful practice for any person who owns or has the right to license or enforce a copyright to: (1) advise others of that ownership or right of license or enforcement; (2) communicate to others that the copyright is available for license or sale; (3) notify another of the infringement of the copyright; or (4) seek compensation on account of past or present infringement or for a license to the copyright.

LRB099 06226 JLS 26291 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing and renumbering Section
6 2RRR , as added by Public Act 98-1119, as follows:

7 (815 ILCS 505/2SSS)

8 Sec. 2SSS ~~2RRR~~. Unfair or deceptive copyright or patent
9 infringement demand letters.

10 (a) As used in this Section:

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

13 "Intended recipient" means a person who purchases, rents,
14 leases, or otherwise obtains a product or service in the
15 commercial market that is not for resale in the commercial
16 market and that is, or later becomes, the subject of a
17 copyright or patent infringement allegation.

18 (b) It is an unlawful practice under this Act for a person,
19 in connection with the assertion of a United States copyright
20 or patent, to send or cause any person to send any written,
21 including electronic, communication that states that the
22 intended recipient or any affiliated person is infringing or
23 has infringed a copyright or patent and bears liability or owes

1 compensation to another person, if:

2 (1) the communication falsely threatens that
3 administrative or judicial relief will be sought if
4 compensation is not paid or the infringement issue is not
5 otherwise resolved;

6 (2) the communication falsely states that litigation
7 has been filed against the intended recipient or any
8 affiliated person;

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

11 (A) the person asserting the copyright or patent is
12 not a person, or does not represent a person, with the
13 current right to license the copyright or patent to or
14 enforce the copyright or patent against the intended
15 recipient or any affiliated person;

16 (B) the communication seeks compensation for a
17 copyright or patent that has been held to be invalid or
18 unenforceable in a final, unappealable or unappealed,
19 judicial or administrative decision; or

20 (C) the communication seeks compensation on
21 account of activities undertaken after the copyright
22 or patent has expired; or

23 (4) the content of the communication fails to include
24 information necessary to inform an intended recipient or
25 any affiliated person about the copyright or patent
26 assertion by failing to include the following:

1 (A) the identity of the person asserting a right to
2 license the copyright or patent to or enforce the
3 copyright or patent against the intended recipient or
4 any affiliated person;

5 (B) if applicable, the patent issued by the United
6 States Patent and Trademark Office alleged to have been
7 infringed; ~~and~~

8 (C) if applicable, the copyright certificate of
9 registration applicable to the copyright work; and

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

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

18 (1) advise others of that ownership or right of license
19 or enforcement;

20 (2) communicate to others that the copyright or patent
21 is available for license or sale;

22 (3) notify another of the infringement of the copyright
23 or patent; or

24 (4) seek compensation on account of past or present
25 infringement or for a license to the copyright or patent.

26 (Source: P.A. 98-1119, eff. 1-1-15; revised 10-20-14.)