

By: Senator(s) Wiggins

To: Judiciary, Division A

SENATE BILL NO. 2787

1 AN ACT TO REENACT SECTIONS 75-24-351 THROUGH 75-24-357,
2 MISSISSIPPI CODE OF 1972, WHICH PROHIBIT BAD FAITH ASSERTIONS OF
3 PATENT INFRINGEMENT AND ESTABLISH REMEDIES FOR PREVAILING
4 PLAINTIFFS IN CIVIL ACTIONS INSTITUTED UNDER THE PROVISIONS; TO
5 REPEAL SECTION 75-24-359, MISSISSIPPI CODE OF 1972, WHICH IS THE
6 PROVISION OF LAW THAT PROVIDES THE REPEALER ON THE REENACTED
7 PROVISIONS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 75-24-351, Mississippi Code of 1972, is
10 reenacted as follows:

11 75-24-351. The following words shall have the following
12 meaning, unless the content clearly states otherwise:

13 (a) "Affiliated person" means a person under common
14 ownership or control of an intended recipient.

15 (b) "Intended recipient" means a person who purchases,
16 rents, leases or otherwise obtains a product or service in the
17 commercial market that is not for resale in the ordinary business
18 and that is, or later becomes, the subject of a patent
19 infringement allegation.



(c) "Person" means any natural person, partnership, corporation, company, trust, business entity or association, and any agent, employee, partner, officer, director, member, associate, or trustee thereof.

SECTION 2. Section 75-24-353, Mississippi Code of 1972, is reenacted as follows:

75-24-353. (1) It is a violation of Sections 75-24-351 through 75-24-357 for a person, in connection with the assertion of a United States patent, to send, or cause any person to send, any written or electronic communication that states that the intended recipient or any affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person if:

(a) The communication threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved and there is a consistent pattern of such threats having been issued and no litigation having been filed;

(b) The communication falsely states that litigation has been filed against the intended recipient or any affiliated person; or

(c) The assertions contained in the communication lack a reasonable basis in fact or law because:

(i) The person asserting the patent is not a person, or does not represent a person, with the current right to



44 license the patent to, or to enforce the patent against, the
45 intended recipient or any affiliated person;

46 (ii) The communication seeks compensation for a
47 patent that has been held to be invalid or unenforceable in a
48 final, unappealable or unappealed judicial or administrative
49 decision;

50 (iii) The communication seeks compensation on
51 account of activities undertaken after the patent has expired; or

52 (iv) The content of the communication fails to
53 include the information necessary to inform an intended recipient
54 or any affiliated person about the patent assertion by failing to
55 include any one of the following:

56 1. The identity of the person asserting a
57 right to license the patent to or enforce the patent against the
58 intended recipient or any affiliated person;

59 2. The patent number issued by the United
60 States Patent and Trademark Office alleged to have been infringed;
61 or

62 3. The factual allegations concerning the
63 specific areas in which the intended recipient or affiliated
64 person's products, services, or technology infringed the patent or
65 are covered by the claims in the patent.

66 (2) It is not a violation of Sections 75-24-351 through
67 75-24-357 for any person who owns or has the right to license or
68 enforce a patent to:



69 (a) Advise others of that ownership or right of license
70 or enforcement;

71 (b) Communicate to others that a patent is available
72 for license or sale;

73 (c) Notify another of the infringement of the patent;
74 or

75 (d) Seek compensation on account of past or present
76 infringement, or for a license to the patent, if the person is not
77 acting in bad faith.

78 (3) The provisions of Sections 75-24-351 through 75-24-357
79 shall not apply to any written or electronic communication sent
80 by:

81 (a) Any owner of a patent who is using the patent in
82 connection with substantial research, development, production,
83 manufacturing, processing or delivery of products or materials;

84 (b) A state institution of higher learning;

85 (c) An agency of the State of Mississippi;

86 (d) A technology transfer organization that is owned by
87 or has a written affiliation agreement with a state institution of
88 higher learning or an agency of the State of Mississippi, or is
89 formed pursuant to Section 37-147-1 et seq.;

90 (e) Any person that has licensed patent rights from a
91 state institution of higher learning, an agency of the State of
92 Mississippi, or a technology transfer organization that is owned
93 by or has a written affiliation agreement, a state institution of



94 higher learning or an agency of the State of Mississippi, or is
95 formed pursuant to Section 37-147-1 et seq., provided that the
96 ownership of the patent rights remains with the state institution
97 of higher learning, the agency of the State of Mississippi, or the
98 technology transfer organization that is owned by or has a written
99 affiliation agreement with a state institution of higher learning
100 or an agency of the State of Mississippi, or is formed pursuant to
101 Section 37-147-1 et seq.; or

102 (f) Any person seeking a claim for relief arising under
103 35 USC Section 271(e) (2) or 42 USC Section 262s.

104 **SECTION 3.** Section 75-24-355, Mississippi Code of 1972, is
105 reenacted as follows:

106 75-24-355. (1) The Attorney General shall have the
107 authority under Sections 75-24-351 through 75-24-357 to conduct
108 civil investigations and bring civil actions.

109 (2) In an action brought by the Attorney General under
110 Sections 75-24-351 through 75-24-357, the court may award or
111 impose any relief available under state law.

112 (3) In addition to the relief provided for in Section
113 75-24-357, upon a motion by the Attorney General and a finding by
114 the court that there is a reasonable likelihood that a person
115 violated Section 75-24-353, the court may require the person to
116 post a bond in an amount equal to a good faith estimate of the
117 costs to litigate a claim and amounts reasonably likely to be



recovered if an action were to be brought under Section 75-24-355.

A hearing shall be held if either party requests a hearing.

SECTION 4. Section 75-24-357, Mississippi Code of 1972, is reenacted as follows:

75-24-357. An intended recipient alleging a violation of Sections 75-24-351 through 75-24-357 may bring an action in any circuit court in this state. A court shall award litigation costs and fees, including reasonable attorney's fees, to a plaintiff who prevails in an action brought pursuant to this section. In addition, the court may award the following remedies to a plaintiff who prevails in an action brought pursuant to Sections 75-24-351 through 75-24-357:

(a) Actual damages; and

(b) Punitive damages in the amount equal to three (3) times the actual damages.

SECTION 5. Section 75-24-359, Mississippi Code of 1972, which is the provision of law that provides for the repealer on the reenacted sections, is repealed.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.

