

Department of Planning and Budget

2014 Fiscal Impact Statement

1. Bill Number: HB375

House of Origin	☒ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. Patron: O'Quinn

3. Committee: Courts of Justice

4. Title: Patent infringement; assertions made in bad faith.

5. Summary: Prohibits any person from making in bad faith an assertion, allegation, or claim that a resident of the Commonwealth is infringing a patent. The measure creates a cause of action for damages and an injunction against a person threatening to bring legal action for alleged patent infringement. A court that finds that a target of an assertion of patent infringement has established a reasonable likelihood that the person has made the assertion in bad faith shall require the person to post a bond in an amount equal to the target's costs to litigate the claim and amounts reasonably likely to be recovered as damages. The Attorney General or any attorney for the Commonwealth is empowered to issue civil investigative demands, accept assurances of voluntary compliance, and seek injunctions. The target of a bad faith assertion or any other person aggrieved by a violation may bring an action to recover actual damages, fees, and costs and obtain equitable relief. If the violation was willful, damages may be increased to the greater of three times the actual damages sustained or \$50,000.

6. Budget Amendment Necessary: Yes.

7. Fiscal Impact Estimates: Preliminary.

8. Fiscal Implications: This bill will have a significant fiscal impact on the Attorney General's Office if passed. The bill provides new investigative and enforcement authority to the Attorney General. The investigative authority includes the power to issue Civil Investigative Demands to obtain documents, require responses to written interrogatories, and to take depositions to determine whether violations of the statute have occurred. The bill authorizes the filing of enforcement actions to obtain injunctions. The bill does not authorize the Attorney General to recover attorney's fees, investigative expenses, or costs in connection with an enforcement action.

The Attorney General's Office does not currently investigate or bring actions related to private patent infringement claims. There is no staff dedicated to this type of work. Thus, the bill will require additional personnel to review complaints, conduct investigations, and initiate and litigate enforcement actions. At this time, it is estimated that at least one attorney

and one investigator or paralegal will be necessary to implement the legislation. The starting salary for the attorney position could be approximately \$55,000, and the starting salary for the investigator or paralegal position could be approximately \$35,000. The cost of benefits for these positions and overheads could be approximately \$53,179. Therefore, the preliminary general fund amount for the annual expenditure impact is estimated at \$143,179.

9. Specific Agency or Political Subdivisions Affected: The Office of the Attorney General and Department of Law.

10. Technical Amendment Necessary: No.

11. Other Comments: House Bill No. 375 as introduced, is similar to House Bill No. 12 and Senate Bill No.150.