

Issue Brief

Patent Troll Protection Legislation

Issue: Georgia businesses have been the target of so-called “patent trolls” alleging patent infringements related to software or business processes used by these companies. The patent trolls seek license fees and threaten to pursue legal action if the business does not agree to their demands. H.B. 809 by Rep. Bruce Williams and others creates a new section within the Georgia Fair Business Practices Act that says a person shall not make a bad-faith assertion that a patent has been infringed.

Background: Patent Assertion Entities – more commonly called “patent trolls” – are not inventors or innovators. Their business model is to buy patents owned by others and then try to turn a profit by aggressively pursuing mostly small and medium-sized businesses they claim infringe the acquired patents. In virtually all cases, the businesses targeted by patent trolls did not copy other companies’ technology. Instead, patent trolls argue that equipment, technology or business processes used by the targeted business requires a license linked to the troll’s patents. After the patent trolls acquire patents of dubious validity, they send letters to a large number of businesses in an effort to extract small, often nuisance-value license payments from them. The letters appear to be a fishing expedition to see which receivers will pay the sums requested. These letters are sometimes vague, often using deceptive or even abusive language. As written, they are designed to get the attention of the business owner.

This strategy can be successful for the troll, and the collective value of these smaller payments can be quite high as smaller businesses seldom have the experience or resources needed to fully evaluate the patents. The small businesses see that they can put the issue behind them if they pay for the license fee and simply move on. That’s exactly what the troll wants to happen. For the cost of sending a letter, the troll can reap hundreds of thousands of dollars from small businesses that, in most cases, don’t owe the troll a dime for a license.

There are all sorts of patent infringement claims from various trolls across the country. Here in Georgia we have examples of small businesses getting letters demanding they pay a license fee for technology they’re using that converts an incoming fax to an email attachment. Another got a letter demanding he pay a license fee for each employee who uses the company’s scanner. Another example is a troll that has demanded a number of our small community banks pay for a license to cover the way their ATMs connect to the internet. None of these demands appear to be valid, but our small businesses are being forced to spend thousands of dollars unnecessarily defending against these demands.

Solution: H.B. 809 is based on a model bill adopted by the Council of State Governments from legislation passed in 2013 by the State of Vermont’s legislature. The bill amends the Georgia Fair Business Practices Act to say that a person may not make a bad-faith assertion of patent infringement.

The bill describes what a court may consider as evidence that a person has made a bad-faith assertion of patent infringement such as not identifying the patent by number, the name and address of the patent’s owner or not giving factual allegations about how the targeted businesses’ processes are infringing the patent. The court may also consider whether the troll had done research into how the targeted company is operating that infringes the patent, if the demand letter lacks specificity about the patent, doesn’t give the recipient a reasonable time to respond, or knows or should have known that their demand is meritless, the demand letter is deceptive, or the troll has threatened to file suit against others or has lost a similar case in court. The bill spells out the kinds of remedies the troll would owe the targeted company if the court found in favor of the company. The bill is narrowly written and it specifically excludes the inventors who hold patents and institutions of higher education.

If a court finds that a person has violated this article, the court may grant relief including restitution to anyone adversely affected by the defendant’s action; costs and fees; exemplary damages equal to \$50,000 or three times the equitable damages, whichever is greater; and other relief as the court deems just and equitable.