

1 H.299

2 Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; consumer protection

6 Statement of purpose of bill as introduced: This bill proposes to authorize an
7 award of liquidated damages to a consumer for a delay in removing a propane
8 tank; to prohibit transmission of an unsolicited bill or demand for payment; to
9 increase the penalty for failure to comply with a consumer protection civil
10 investigation; and to reorganize provisions of the Consumer Protection Act.

11 ~~An act relating to enhancing consumer protection provisions for propane~~
12 ~~refunds, unsolicited demands for payment, and failure to comply with civil~~
13 ~~investigations.~~ *An act relating to amending consumer protection provisions*
14 *for propane refunds, unsolicited demands for payment, bad faith assertions*
15 *of patent infringement and failure to comply with civil investigations.*

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 ~~Sec. 1. 9 V.S.A. § 2461b(h) is added to read:~~

18 ~~(h)(1) A seller who has a duty to remove a propane storage tank from a~~
19 ~~consumer's premises shall remove the tank within 30 days of the date when the~~
20 ~~seller disconnects propane service or is notified by the consumer in writing that~~
21 ~~service has been disconnected, whichever is earlier.~~

1 ~~(2) A seller who fails to remove a propane storage tank in accordance~~
2 ~~with this subsection shall make a penalty payment to the consumer of \$250.00~~
3 ~~on the first day after the tank should have been removed, and \$75.00 per day~~
4 ~~for each day thereafter until the tank has been removed and the penalty~~
5 ~~payment has been mailed or delivered.~~

6 Sec. 2. 9 V.S.A. chapter 135 is amended to read:

7 CHAPTER 135. UNSOLICITED MERCHANDISE; UNSOLICITED
8 DEMANDS FOR PAYMENT

9 * * *

10 § 4402. UNSOLICITED DEMANDS FOR PAYMENT

11 (a) It is an unfair and deceptive act and practice in commerce in violation
12 of section 2453 of this title for a person to submit to another person a demand
13 for payment for goods or services if:

14 (1) the person has not provided the goods or services for which payment
15 is demanded; or

16 (2) the recipient of the demand did not order or otherwise request the
17 goods or services.

18 (b) Subsection (a) of this section shall not apply to a demand for payment
19 or solicitation to renew an existing agreement for the purchase of goods or
20 services.

1 ~~Sec. 3. 9 V.S.A. § 2460 is amended to read:~~

2 § 2460. CIVIL INVESTIGATION

3 (a)(1) ~~The attorney general~~ Attorney General or a state's attorney whenever
4 he or she has reason to believe any person to be or to have been in violation of
5 section 2453 of this title, or of any rule or regulation made pursuant to section
6 2453 of this title, may examine or cause to be examined by any agent or
7 representative designated by him or her for that purpose, any books, records,
8 papers, memoranda, and physical objects of whatever nature bearing upon each
9 alleged violation, and may demand written responses under oath to questions
10 bearing upon each alleged violation.

11 (2) ~~The attorney general~~ Attorney General or a state's attorney may
12 require the attendance of such person or of any other person having knowledge
13 in the premises in the county where ~~such the~~ the person resides or has a place of
14 business or in Washington County if ~~such the~~ the person is a nonresident or has no
15 place of business within the ~~state~~ State, and may take testimony and require
16 proof material for his or her information, and may administer oaths or take
17 acknowledgment in respect of any book, record, paper, or memorandum.

18 (3) ~~The attorney general~~ Attorney General or a state's attorney shall
19 serve notice of the time, place, and cause of ~~such the~~ the examination or
20 attendance, or notice of the cause of the demand for written responses, at least
21 ten days prior to the date of ~~such the~~ the examination, personally or by certified

1 ~~mail, upon such the person at his or her principal place of business, or, if such~~
2 ~~the place is not known, to his or her last known address.~~

3 (4) Any book, record, paper, memorandum, or other information
4 produced by any person pursuant to this section shall not, unless otherwise
5 ordered by a court of this ~~state~~ State for good cause shown, be disclosed to any
6 person other than the authorized agent or representative of the ~~attorney general~~
7 Attorney General or a state's attorney or another law enforcement officer
8 engaged in legitimate law enforcement activities, unless with the consent of the
9 person producing the same.

10 (5) This subsection ~~(a)~~ shall not be applicable to any criminal
11 investigation or prosecution brought under the laws of this or any state.

12 (b)(1) A person upon whom a notice is served pursuant to the provisions of
13 this section shall comply with the terms thereof unless otherwise provided by
14 the order of a court of this ~~state~~ State.

15 (2) Any person who, with intent to avoid, evade, or prevent compliance,
16 in whole or in part, with any civil investigation under this section, removes
17 from any place, conceals, withholds, or destroys, mutilates, alters, or by any
18 other means falsifies any documentary material in the possession, custody, or
19 control of any person subject of any such notice, or mistakes or conceals any
20 information, shall be ~~fin~~ subject to a civil penalty of not more than \$5,000.00

1 ~~\$25,000.00 and to recovery for the Attorney General or state's attorney costs~~

2 ~~and fees for an action brought to enforce compliance with this section.~~

3 (c)(1) Whenever any person fails to comply with any notice served upon
4 him or her under this section or whenever satisfactory copying or reproduction
5 of ~~any such~~ material pursuant to this section cannot be done and ~~such the~~
6 person refuses to surrender ~~such the~~ material, the ~~attorney general~~ Attorney
7 General or a state's attorney may file, in the ~~superior court~~ Superior Court in
8 which ~~such the~~ person resides or has his or her principal place of business, or
9 in Washington ~~county~~ County if ~~such the~~ person is a nonresident or has no
10 principal place of business in this ~~state~~ State, and serve upon ~~such the~~ person, a
11 petition for an order of ~~such the~~ court for the enforcement of this section.

12 (2) Whenever ~~any a~~ petition is filed under this section, ~~such the~~ court
13 shall have jurisdiction to hear and determine the matter ~~so~~ presented, and to
14 enter ~~such order or~~ one or more orders as may be required to carry into effect
15 the provisions of this section.

16 (3) ~~Any disobedience of any~~ A person who violates an order entered
17 under this section by ~~any a~~ court shall be punished ~~as a~~ for contempt ~~thereof~~ of
18 court.

1 ~~Sec. 4. 9 V.S.A. § 2461e is amended to read:~~

2 § 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND
3 PREPAID CONTRACTS

4 (a)(1) Contract and solicitation requirements. A contract for the retail sale
5 of home heating oil, kerosene, or liquefied petroleum gas that offers a
6 guaranteed price plan, including a fixed price contract, a prepaid contract, a
7 cost-plus contract, and any other similar terms, shall be in writing, and the
8 terms and conditions of such price plans shall be disclosed. Such disclosure
9 shall be in plain language and shall immediately follow the language
10 concerning the price or service that could be affected and shall be printed in no
11 less than 12-point boldface type of uniform font. A solicitation for the retail
12 sale of home heating oil or liquefied petroleum gas that offers a guaranteed
13 price plan that could become a contract upon a response from a consumer,
14 including a fixed price contract, a prepaid contract, a cost-plus contract, and
15 any other similar terms, shall be in writing, and the terms and conditions of
16 such offer shall be disclosed in plain language.

17 * * *

18 Sec. 5. EFFECTIVE DATE

19 ~~This act shall take effect on July 1, 2013.~~

Sec. 1. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF PROPANE

* * *

(e) When terminating service to a consumer, a seller shall comply with the following requirements.

* * *

(2) Subject to subdivision (h)(5) of this section:

(A) Within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, the seller shall refund to the consumer the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer.

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

* * *

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of:

(A) \$250.00 on the first day after the refund was due; and

(B) \$75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered, provided that the total amount that accrues under this subdivision (B) shall not exceed 10 times the amount of the refund.

* * *

(h)(1) A seller who has a duty to remove a propane storage tank from a consumer's premises shall remove the tank within 20 days or, in the case of an underground storage tank, within 30 days of the earliest of the following dates:

(A) the date on which the consumer requests termination of service;

(B) the date the seller disconnects propane service; or

(C) the date on which the seller is notified by the consumer in writing that service has been disconnected.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if a consumer requests that a tank be removed on a specific day, the seller shall remove the tank no more than 10 days after the date requested, or within the period required by subdivision (1) of this subsection, whichever is later.

(3) A seller who fails to remove a propane storage tank in accordance with this subsection shall make a penalty payment to the consumer of:

(A) \$250.00 on the first day after the tank should have been removed;

and

(B) \$75.00 per day for each day thereafter until the tank has been removed and the penalty payments have been mailed or delivered, provided that the total amount that accrues under this subdivision (B) shall not exceed \$2,000.00.

(4)(A) Notwithstanding subdivision (3) of this subsection, no penalty shall be due for the time a seller is unable to remove a tank due to weather or other conditions not caused by the seller that bar access to the tank, if the seller provides within five days of the latest date the tank was otherwise required to be removed:

(i) a written explanation for the delay;

(ii) what reasonable steps the consumer must take to provide access to the tank; and

(iii) a telephone number, a mailing address, and an e-mail address the consumer can use to notify the seller that the steps have been taken.

(B) The seller shall have 20 days from the date he or she receives the notice from the consumer required in subdivision (4)(A)(iii) of this subsection to remove the tank.

(5) A consumer who prevents access to a propane storage tank, such that a seller is unable to timely remove the tank from the property or determine the amount of propane remaining in the tank in compliance with this section, shall not be entitled to a refund for propane remaining in the storage tank pursuant to subsection (e) of this section until the consumer takes the reasonable steps identified by the seller that are necessary to allow access to the tank and provides notice to the seller that he or she has taken those steps, in compliance with the process established in subdivision (4) of this subsection.

Sec. 2. IMPLEMENTATION

The penalties created in 9 V.S.A. § 2461b(h)(3) shall not accrue prior to July 20, 2013.

Sec. 3. 9 V.S.A. § 2461e is amended to read:

**§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND
PREPAID CONTRACTS**

(a)(1) Contract and solicitation requirements. A contract for the retail sale of home heating oil, kerosene, or liquefied petroleum gas that offers a guaranteed price plan, including a fixed price contract, a prepaid contract, a

cost-plus contract, and any other similar terms, shall be in writing, and the terms and conditions of such price plans shall be disclosed. Such disclosure shall be in plain language and shall immediately follow the language concerning the price or service that could be affected and shall be printed in no less than 12-point boldface type of uniform font. A solicitation for the retail sale of home heating oil or liquefied petroleum gas that offers a guaranteed price plan that could become a contract upon a response from a consumer, including a fixed price contract, a prepaid contract, a cost-plus contract, and any other similar terms, shall be in writing, and the terms and conditions of such offer shall be disclosed in plain language.

* * *

Sec. 4. 9 V.S.A. chapter 135 is amended to read:

*CHAPTER 135. UNSOLICITED MERCHANDISE; SOLICITATION IN THE
GUISE OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT*

* * *

*§ 4402. SOLICITATION IN THE GUISE OF A BILL, INVOICE, OR
STATEMENT OF ACCOUNT*

(a) In this section:

(1)(A) "Solicitation" means a document that reasonably could be considered a bill, invoice, or statement of account due, but is in fact an offer to sell goods or services to a consumer that were not requested by the consumer.

~~(B) "Solicitation" does not include an offer to renew an existing agreement for the purchase of goods or services.~~

(B) "Solicitation" does not include an offer to renew an existing agreement for the purchase of goods or services, provided that the offer specifies the date on which the existing agreement expires.

(2) For purposes of subdivision (1)(A) of this subsection, factors to determine whether a document "reasonably could be considered to be a bill, invoice, or statement of account due" may include:

(A) The document is described as a "bill," "invoice," "statement," "final notice," or similar title.

(B) The document uses the term "remit" or "pay" with respect to a dollar amount, or similar wording.

(C) The document purports to impose a kind of late fee or similar penalty for nonpayment.

(D) The document refers to a dollar figure as an "amount due," "amount owing," or similar wording.

(b) It is an unfair and deceptive act and practice in commerce in violation of section 2453 of this title for a person to send to a consumer through any medium a solicitation in violation of the requirements of this section.

(c)(1) A solicitation shall bear on its face the following disclaimer in conspicuous boldface capital letters of a color prominently contrasting with

the background against which it appears, including all other print on the face of the solicitation, and that are at least as large, bold, and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type:
“THIS IS NOT A BILL. THIS IS A SOLICITATION FOR THE SALE OF GOODS OR SERVICES. YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED UNLESS YOU ACCEPT THIS OFFER.”

(2) For purposes of subdivision (1) of this subsection, “color prominently contrasting” excludes any color, or any intensity of an otherwise included color, that does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions and which is not at least as vivid as any other color on the face of the solicitation.

(d)(1) The disclaimer required in subsection (c) of this section shall be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation that reasonably could be construed to specify a monetary amount due and payable by the recipient.

(2) The disclaimer required in subsection (c) of this section shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces or modifies the required text, such as “Legal Notice Required By Law” or similar wording.

(3) The disclaimer required in subsection (c) of this section shall not, by folding or any other means, be made unintelligible or less prominent than any other information on the face of the solicitation.

(4) If a solicitation consists of more than one page, or if any page is designed to be separated into portions, the disclaimer required in subsection (c) of this section shall be displayed in its entirety on the face of each page or portion of a page that reasonably could be considered a bill, invoice, or statement of account due as required in this subsection.

Sec. 5. 9 V.S.A. § 2460 is amended to read:

§ 2460. CIVIL INVESTIGATION

(a)(1) The ~~attorney general~~ Attorney General or a state's attorney whenever he or she has reason to believe any person to be or to have been in violation of section 2453 of this title, or of any rule or regulation made pursuant to section 2453 of this title, may examine or cause to be examined by any agent or representative designated by him or her for that purpose, any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation, and may demand written responses under oath to questions bearing upon each alleged violation.

(2) The ~~attorney general~~ Attorney General or a state's attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where ~~such~~ the person resides or has

a place of business or in Washington County if ~~such~~ the person is a nonresident or has no place of business within the ~~state~~ State, and may take testimony and require proof material for his or her information, and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(3) The ~~attorney general~~ Attorney General or a state's attorney shall serve notice of the time, place, and cause of ~~such~~ the examination or attendance, or notice of the cause of the demand for written responses, at least ten days prior to the date of ~~such~~ the examination, personally or by certified mail, upon ~~such~~ the person at his or her principal place of business, or, if ~~such~~ the place is not known, to his or her last known address.

(4) Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this ~~state~~ State for good cause shown, be disclosed to any person other than the authorized agent or representative of the ~~attorney general~~ Attorney General or a state's attorney or another law enforcement officer engaged in legitimate law enforcement activities, unless with the consent of the person producing the same.

(5) This subsection (~~is~~) shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b)(1) A person upon whom a notice is served pursuant to the provisions of this section shall comply with the terms thereof unless otherwise provided by the order of a court of this ~~state~~ State.

(2) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice, or mistakes or conceals any information, shall be ~~fined~~ subject to a civil penalty of not more than \$5,000.00 \$25,000.00 and to recovery by the Attorney General's or state's attorney's office the reasonable value of its services and expenses in enforcing compliance with this section.

(c)(1) Whenever any person fails to comply with any notice served upon him or her under this section or whenever satisfactory copying or reproduction of ~~any such~~ material pursuant to this section cannot be done and ~~such the~~ person refuses to surrender such the material, the ~~attorney general~~ Attorney General or a state's attorney may file, in the ~~superior court~~ Superior Court in which ~~such the~~ person resides or has his or her principal place of business, or in Washington ~~county~~ County if such the person is a nonresident or has no principal place of business in this ~~state~~ State, and serve upon such the person, a petition for an order of such the court for the enforcement of this section.

(2) Whenever ~~any~~ a petition is filed under this section, ~~such~~ the court shall have jurisdiction to hear and determine the matter ~~so~~ presented, and to enter ~~such order or~~ one or more orders as may be required to carry into effect the provisions of this section.

(3) ~~Any disobedience of any~~ A person who violates an order entered under this section by ~~any~~ a court shall be punished ~~as a~~ for contempt ~~thereof of~~ court and shall be subject to a civil penalty of not more than \$25,000.00 and to recovery by the Attorney General's or state's attorney's office of the reasonable value of its services and expenses in enforcing compliance with this section.

~~Sec. 6. REORGANIZATION OF CONSUMER PROTECTION~~

~~PROVISIONS~~

~~Pursuant to its statutory revision authority under 2 V.S.A. § 424, the Legislative Council, in consultation with the Office of the Attorney General, shall renumber and rearrange sections in Title 9 of the Vermont Statutes Annotated in order to improve accessibility and functionality of the body of Vermont statutory law governing consumer protection.~~

~~Sec. 7. 9 V.S.A. § 2466b is added to read:~~

~~§ 2466b. NOTICE OF TOWING SERVICE AND STORAGE FEES~~

~~(a) A towing service operator whose assistance is requested by law enforcement or by the owner of the vehicle to be towed shall provide the~~

~~vehicle owner, unless he or she is absent or incapacitated, at the tow site and
before the vehicle is towed a written notice which states:~~

~~(1) the name, address, telephone number, and, if available, website
address of the towing service operator and, if known, the cost of the towing
service; and~~

~~(2) the daily fee to store the vehicle; when the storage fee will begin
accruing; the name, address, telephone number and, if available, website
address of the storage facility operator; and the hours during which the
vehicle can be retrieved.~~

~~(b)(1) If a vehicle owner is absent from the tow site or deemed
incapacitated by law enforcement and the vehicle owner has not contacted the
towing service within 72 hours of the vehicle being towed, then the towing
service operator shall send to the most recent address reflected in vehicle
registration records a notice stating:~~

~~(A) that the vehicle has been towed or stored, or both;~~

~~(B) the names, addresses, telephone numbers, and, if available,
website addresses of the towing service operator and storage facility operator;~~

~~(C) the daily fee for storage and when the storage fee began
accruing;~~

~~(D) the fee for towing the vehicle; and~~

~~(E) payment instructions.~~

~~(2) Upon request by a towing service operator, the Department of Motor Vehicles shall provide the operator with the vehicle owner's most recent address reflected in vehicle registration records.~~

Sec. 8. 9 V.S.A. § 2466c is added to read:

§ 2466c. USED CAR SALES; REQUIRED DISCLOSURES

(a) As used in this section, the terms "dealer" and "used vehicle" shall have the same meanings as defined at 16 C.F.R. § 455.1.

(b) Before offering a used vehicle for sale to a consumer, a dealer shall prepare and display a Buyers Guide that conforms to the requirements of 16 C.F.R. part 455, and that additionally includes a signature line for the consumer's signature in immediate proximity to the statement: "I hereby acknowledge receipt of the Buyers Guide at the closing of this sale." The signature line and statement shall be on page two of the Buyers Guide below the space provided for the name of the individual to be contacted in the event of complaints after sale.

(c) A dealer selling a used vehicle to a consumer shall, on the Buyers Guide as specified in subsection (b) of this section, obtain the consumer's signature acknowledging receipt of the Buyers Guide, and shall furnish the consumer with a copy of the Buyers Guide that is signed by the consumer.

~~(d) A dealer's failure to comply with subsection (c) of this section is an unfair and deceptive act and practice in commerce that is enforceable solely by the Attorney General under this chapter.~~

~~Sec. 9. ADDITION TO THE DEALER REPORT OF SALE FORM~~

~~The Department of Motor Vehicles shall amend the dealer report of sale form required under 23 V.S.A. § 467 to require a dealer to report, with respect to the sale of a used motor vehicle, whether the vehicle was sold "as is."~~

~~Sec. 10. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2013, except that Secs. 8 (used car sales; required disclosures) and 9 (addition to the dealer report of sale form) of this act shall take effect on January 1, 2014.~~

Sec. 6. 9 V.S.A. chapter 120 is added to read:

CHAPTER 120. BAD FAITH ASSERTIONS
OF PATENT INFRINGEMENT

§ 4195. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE

(a) The General Assembly finds that:

(1) Vermont is striving to build an entrepreneurial and knowledge based economy. Attracting and nurturing small and medium sized internet technology ("IT") and other knowledge based companies is an important part of this effort and will be beneficial to Vermont's future.

(2) Patents are essential to encouraging innovation, especially in the IT and knowledge based fields. The protections afforded by the federal patent system create an incentive to invest in research and innovation, which spurs economic growth. Patent holders have every right to enforce their patents when they are infringed, and patent enforcement litigation is necessary to protect intellectual property.

(3) The General Assembly does not wish to interfere with the good faith enforcement of patents or good faith patent litigation. The General Assembly also recognizes that Vermont is preempted from passing any law that conflicts with federal patent law.

(4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost hundreds of thousands of dollars or more, can be a significant burden on small and medium sized companies. Vermont wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.

(5) In order for Vermont companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving such information

at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on Vermont companies.

(6) Abusive patent litigation, and especially the assertion of bad faith infringement claims, can harm Vermont companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee, even if the claim is meritless. This is especially so for small and medium sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.

(7) Not only do bad faith patent infringement claims impose a significant burden on individual Vermont businesses, they also undermine Vermont's efforts to attract and nurture small and medium sized IT and other knowledge based companies. Funds used to avoid the threat of bad faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming Vermont's economy.

(b) Through this narrowly focused act, the General Assembly seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect Vermont businesses from abusive and bad faith assertions of patent infringement, and build Vermont's economy, while at the same time respecting federal law and being careful to not interfere with legitimate patent enforcement actions.

§ 4196. DEFINITIONS

In this chapter:

(1) “Demand letter” means a letter, e-mail, or other communication asserting or claiming that the target has engaged in patent infringement.

(2) “Target” means a Vermont person:

(A) who has received a demand letter or against whom an assertion or allegation of patent infringement has been made;

(B) who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(C) whose customers have received a demand letter asserting that the person’s product, service, or technology has infringed a patent.

§ 4197. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

(a) A person shall not make a bad faith assertion of patent infringement.

(b) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

(1) The demand letter does not contain the following information:

(A) the patent number;

(B) the name and address of the patent owner or owners and assignee or assignees, if any; and

(C) factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent.

(2) Prior to sending the demand letter, the person fails to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or such an analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

(3) The demand letter lacks the information described in subdivision (1) of this subsection, the target requests the information, and the person fails to provide the information within a reasonable period of time.

(4) The demand letter demands payment of a license fee or response within an unreasonably short period of time.

(5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

(6) The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or assertion is meritless.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and:

(A) those threats or lawsuits lacked the information described in subdivision (1) of this subsection; or

(B) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) Any other factor the court finds relevant.

(c) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in subdivision (b)(1) of this section.

(2) Where the demand letter lacks the information described in subdivision (b)(1) of this section and the target requests the information, the person provides the information within a reasonable period of time.

(3) The person engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.

(4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.

(5) The person is:

(A) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(B) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.

(6) The person has:

(A) demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or

(B) successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

§ 4198. BOND

Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad faith assertion of patent infringement in violation of this chapter, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under § 4199(b) of this chapter, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. A bond ordered pursuant to this section shall not exceed \$250,000.00. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

§ 4199. ENFORCEMENT; REMEDIES; DAMAGES

(a) The Attorney General shall have the same authority under this chapter to make rules, conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as provided under chapter 63 of this title. In an action brought by the Attorney General under this chapter the court may award or impose any relief available under chapter 63 of this title.

(b) A target of conduct involving assertions of patent infringement, or a person aggrieved by a violation of this chapter or by a violation of rules adopted under this chapter, may bring an action in Superior Court. A court may award the following remedies to a plaintiff who prevails in an action brought pursuant to this subsection:

(1) equitable relief;

(2) damages;

(3) costs and fees, including reasonable attorney's fees; and

(4) exemplary damages in an amount equal to \$50,000.00 or three times the total of damages, costs, and fees, whichever is greater.

(c) This chapter shall not be construed to limit rights and remedies available to the State of Vermont or to any person under any other law and shall not alter or restrict the Attorney General's authority under chapter 63 of this title with regard to conduct involving assertions of patent infringement.

Sec. 7. EFFECTIVE DATE

BILL AS PASSED THE HOUSE AND SENATE
2013

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This act shall take effect on July 1, 2013.