

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN SENATE JUNE 3, 2015

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 681

Introduced by Senator Hill

(Principal coauthor: Assembly Member Mullin)

February 27, 2015

~~An act to add Title 19 (commencing with Section 3273.5) to Part 4 of Division 3 of the Civil Code, relating to civil law. An act to add Section 24446 to the Revenue and Taxation Code, relating to income taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 681, as amended, Hill. ~~Civil law: patents.~~ *Corporation taxes: deduction: public utilities.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including gas corporations.

The Corporation Tax Law allows various deductions in computing the income that is subject to the taxes imposed by those laws, and in modified conformity with federal law, allows a deduction for ordinary and necessary expenses carrying on a trade or business. Existing law provides that no deduction is allowed for any fine or similar penalty paid to a government for the violation of any law.

This bill would not allow a deduction under the Corporation Tax Law for expenses or expenditures for plant and equipment by Pacific Gas and Electric Company that the Public Utilities Commission determined in a specific decision should be borne by the shareholders of the utility, and not the utility's ratepayers, because of the utility's numerous

violations of law relating to the public safety. The bill would additionally not allow a deduction for amounts that the Public Utilities Commission ordered Pacific Gas and Electric Company to pay to reimburse the commission for its costs incurred in investigating and enforcing violations of law by the utility relating to public safety.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing federal law provides for the issuance and enforcement of patents, makes a person who actively induces infringement of a patent liable as an infringer, and establishes rights and remedies for infringement of patents.~~

~~This bill would make it unlawful to engage in a pattern or practice of sending written communications, stating that the recipient, as defined, is or may be infringing, or has or may have infringed, on a United States patent if the sender of the communication makes a specified false statement or representation in bad faith, fraudulently seeks compensation for specified conduct, or fraudulently conceals or omits specified information in the communication.~~

~~The bill would provide that a person who sends a communication in violation of these provisions may be enjoined and is liable for a civil penalty of up to \$2,500 for each violation. The bill would also specify that its provisions are only enforceable by the Attorney General, an attorney acting on behalf of the state, or a district attorney, county counsel, city attorney, or city prosecutor in this state. The bill would specify that its provisions do not impair or impede any other rights, causes of action, claims, or defenses available under other law and that the remedies provided for under its provisions are cumulative with any other remedies available under other law.~~

Vote: majority ²/₃. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 24446 is added to the Revenue and*
- 2 *Taxation Code, to read:*
- 3 *24446. Section 162(a) of the Internal Revenue Code, relating*
- 4 *to trade or business expenses, in general, shall not apply to the*
- 5 *following:*
- 6 *(a) Expenses or expenditures for plant and equipment by Pacific*
- 7 *Gas and Electric Company that the Public Utilities Commission*

1 *determined in Decision 15-04-024 (April 9, 2015), “Decision on*
 2 *Fines and Remedies to be Imposed on Pacific Gas and Electric*
 3 *Company for Specific Violations in Connection with the Operation*
 4 *and Practices of its Natural Gas Transmission System Pipelines,”*
 5 *should be borne by the shareholders of the utility, and not the*
 6 *utility’s ratepayers, because of the utility’s numerous violations*
 7 *of law relating to public safety.*

8 *(b) Amounts that the Public Utilities Commission, in Decision*
 9 *15-04-024, ordered Pacific Gas and Electric Company to pay to*
 10 *reimburse the commission for its costs incurred in investigating*
 11 *and enforcing a violation of law relating to public safety by the*
 12 *utility.*

13 *SEC. 2. This act is an urgency statute necessary for the*
 14 *immediate preservation of the public peace, health, or safety within*
 15 *the meaning of Article IV of the Constitution and shall go into*
 16 *immediate effect. The facts constituting the necessity are:*

17 *In order for the provisions of this act to be applicable to the*
 18 *current tax year and to better ensure the effectiveness of decisions*
 19 *of the Public Utilities Commission protecting the public safety, it*
 20 *is necessary that this act take effect immediately.*

21 ~~SECTION 1. Title 19 (commencing with Section 3273.5) is~~
 22 ~~added to Part 4 of Division 3 of the Civil Code, to read:~~

23
 24 ~~TITLE 19. PATENT DEMANDS~~

25
 26 ~~3273.5. For the purposes of this title, the following definitions~~
 27 ~~shall apply:~~

28 ~~(a) “Final determination” means, with respect to the invalidity~~
 29 ~~or unenforceability of a patent, that the invalidity or~~
 30 ~~unenforceability has been determined by a court of the United~~
 31 ~~States or the United States Patent and Trademark Office in a final~~
 32 ~~decision that is unappealable or for which any opportunity for~~
 33 ~~appeal is no longer available.~~

34 ~~(b) “Recipient” means a person who purchases, rents, leases,~~
 35 ~~or otherwise obtains a product or service in the commercial market~~
 36 ~~that is not for resale in the commercial market and that is, or later~~
 37 ~~becomes, the subject of a patent infringement allegation.~~

38 ~~3273.6. It is unlawful for a person, in connection with the~~
 39 ~~assertion of a United States patent, to engage in a pattern or practice~~
 40 ~~of sending written communications that state or represent that the~~

1 recipient is or may be infringing, or has or may have infringed,
2 the patent and is liable or owes compensation to another, if any of
3 the following conditions are met:

4 (a) ~~The sender of the communication makes, in bad faith, any~~
5 ~~of the following statements or representations, knowing those~~
6 ~~statements or representations are false:~~

7 (1) ~~That the sender has the right to license or enforce the patent~~
8 ~~at the time the communications are sent, if the sender is not a~~
9 ~~person with that right.~~

10 (2) ~~That a civil action asserting a claim of infringement of the~~
11 ~~patent has been filed against either the recipient or against other~~
12 ~~persons.~~

13 (3) ~~That legal action for infringement of the patent will be taken~~
14 ~~against the recipient.~~

15 (4) ~~That the sender is the exclusive licensee of the patent~~
16 ~~asserted in the communications.~~

17 (5) ~~That persons other than the recipient purchased a license for~~
18 ~~the patent asserted in the communications.~~

19 (6) ~~That persons other than the recipient purchased a license,~~
20 ~~and the sender does not disclose that the license is unrelated to the~~
21 ~~alleged infringement or the patent asserted in the communications.~~

22 (7) ~~That an investigation of the recipient's alleged infringement~~
23 ~~has occurred.~~

24 (8) ~~That the sender, or an affiliate of the sender, previously filed~~
25 ~~a civil action asserting a claim of infringement of the patent based~~
26 ~~on the activity that is the subject of the written communication~~
27 ~~when the sender knew that the activity was held, in a final~~
28 ~~determination, not to infringe the patent.~~

29 (b) ~~The sender of the communication fraudulently seeks~~
30 ~~compensation for any of the following:~~

31 (1) ~~A patent claim that has been determined to be unenforceable~~
32 ~~or invalid against the recipient in a final determination.~~

33 (2) ~~Activity undertaken by the recipient after expiration of the~~
34 ~~patent asserted in the communication.~~

35 (3) ~~Activity of the recipient that the sender knew was authorized,~~
36 ~~with respect to the patent claim that is the subject of the~~
37 ~~communication, by a person with the right to license the patent.~~

38 (c) ~~The sender of the communication fraudulently conceals or~~
39 ~~omits any of the following information from the communication,~~

1 when that information is readily available to the sender at the time
2 the communication is sent:

3 (1) ~~The identity of the person asserting a right to license the~~
4 ~~patent to, or enforce the patent against, the recipient, including the~~
5 ~~identity of any parent entity and the ultimate parent entity of the~~
6 ~~person, unless that person is a public company and the name of~~
7 ~~the public company is identified.~~

8 (2) ~~Identification of at least one patent issued by the United~~
9 ~~States Patent and Trademark Office alleged to have been infringed.~~

10 (3) ~~Identification, to the extent reasonable under the~~
11 ~~circumstances, of at least one product, service, or other activity of~~
12 ~~the recipient that is alleged to infringe the identified patent.~~

13 (4) ~~A description, to the extent reasonable under the~~
14 ~~circumstances, of how the product, service, or other activity of the~~
15 ~~recipient infringes an identified patent and patent claim.~~

16 (5) ~~A name and contact information for a person the recipient~~
17 ~~may contact about the assertions or claims relating to the patent~~
18 ~~contained in the communications.~~

19 ~~3273.7. (a) A person who sends a communication in violation~~
20 ~~of Section 3273.6 may be enjoined in a court of competent~~
21 ~~jurisdiction and is liable for a civil penalty not to exceed two~~
22 ~~thousand five hundred dollars (\$2,500) for each violation. The~~
23 ~~penalty collected in an action by the Attorney General or an~~
24 ~~attorney acting on behalf of the state shall be paid to the General~~
25 ~~Fund.~~

26 (b) ~~Subject to subdivision (c), the Attorney General, an attorney~~
27 ~~acting on behalf of the state, or a district attorney, county counsel,~~
28 ~~city attorney, or city prosecutor in this state shall have the sole~~
29 ~~authority to enforce this title with respect to the unlawful acts~~
30 ~~expressly enumerated in Section 3273.6. Nothing in this title shall~~
31 ~~be construed to create a private right of action with respect to the~~
32 ~~unlawful acts expressly enumerated in Section 3273.6.~~

33 (c) ~~Except as provided in subdivision (b) with respect to the~~
34 ~~unlawful acts expressly enumerated in Section 3273.6, nothing in~~
35 ~~this title shall be construed to impair or impede any other rights,~~
36 ~~causes of action, claims, or defenses available under other law.~~
37 ~~The remedies provided in this title are cumulative with any other~~
38 ~~remedies available under other law.~~

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