

January 27, 2015

The Honorable Jeff King, Chairperson
Senate Committee on Judiciary
Statehouse, Room 341-E
Topeka, Kansas 66612

Dear Senator King:

SUBJECT: Fiscal Note for SB 38 by 2014 Special Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 38 is respectfully submitted to your committee.

SB 38 addresses bad faith assertions of patent infringement. The court would consider evidence, as outlined in the bill, that a person has or has not made a bad faith assertion of patent infringement. If there is reasonable likelihood that a bad faith assertion has been made, the court may require the person to post a bond not to exceed \$250,000. The bill states what the court may award in remedies to a plaintiff who prevails in an action. The Attorney General would have the authority to adopt rules and regulations, conduct civil investigations, bring civil actions and enter into consent judgments in cases of bad faith assertions of patent infringement. In addition, any person aggrieved by a violation of this bill could bring an action in district court. The court could award penalties.

The Office of Judicial Administration notes the SB 38 would create a new cause of action for the bad faith assertion on patient infringement. Although cases filed under the provisions of this bill may be somewhat related to the Attorney General's authority under current law regarding unfair trade and consumer protection actions, it is anticipated that there would not be an underlying existing district court case in which these causes of action would be asserted. Therefore, the bill's provisions could result in the filings of new types of cases, creating additional work for judges and non-judicial personnel. Appeals from these cases could also impact the workload of the appellate courts. Nevertheless, until the courts have had an opportunity to operate under the provisions of the bill, an accurate estimate of the fiscal effect cannot be given.

The Office of the Attorney General states that the expenditure under SB 38 would be nominal, involving the investigation and litigation of violations. The bill would authorize the Attorney General to recover these expenses through investigative fees levied against violators. Successful litigation would result in civil penalties and restitution for the state. However, it is

The Honorable Jeff King, Chairperson

January 27, 2015

Page 2—SB 38

difficult to reasonably estimate revenues that would be derived from future judgments, but it would be a net positive revenue to the State General Fund. Any fiscal effect associated with SB 38 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Mary Rinehart, Judiciary
Willie Prescott, Attorney General's Office