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1. Bill	2. Date	3. Pages
S.758	Oct 3, 1992 (140)	H11130-31

4. Action:

State Employees Patent Infringement Liability: House passed S. 758, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all remedies can be obtained in such suit that can be obtained in a suit against a private entity—clearing the measure for the President.

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PATENT AND PLANT VARIETY PROTECTION REMEDY CLARIFICATION ACT

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 758) to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that

can be obtained in a suit against a private entity and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. MOORHEAD. Reserving the right to object, Mr. Speaker, I yield to the gentleman from New Jersey for an explanation.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I rise in support of S. 758, a bill which would clarify that States, their employees and officers acting in an official capacity, and instrumentalities of States are not immune from suit in Federal Court for violations of patents and plant variety protections.

Prior to 1985 and the Supreme Court ruling in Atascadero State Hospital versus Scanlon, intellectual property owners could obtain damages against States for violations of copyright and patent rights.

In fact, Atascadero was contrary to previous Supreme Court decisions. The courts have since held that previous decisions had been wrong and State sovereign immunity could not be waived unless specifically stated by Congress.

During the 101st Congress, the House approved legislation to waive State sovereign immunity for copyright violations. There have been, and continue to be, a number of instances involving violations of patent and trademark rights by States. We need to plug these loopholes as well.

During the 101st Congress a bill relating to the waiver of State sovereign immunity in cases of patent violation was approved by committee but not enacted into law.

The protection of intellectual property rights is of critical importance to the Nations's ability to compete in today's global market.

To permit a State to use an individual's creative invention without any compensation is not only unfair but discourages others from investing time and money into developing new products and processes. States should be subjet to the same remedies as a private entity that violates patent rights.

I urge adoption of this bill.

Mr. MOORHEAD. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

S. 758

Be in enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

The Act may be cited as the "Patent and Plant Variety Protection Remedy Clarification Act".

SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PATENTS.

(a) LIABILITY AND REMEDIES.—(1) Section 271 of title 35, United States Code, is amended by adding at the end the following:

"(h) As used in this section, the term 'whoever' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".

(2) Chapter 29 of title 35, United States Code, is amended by adding at the end the following new section:

"§ 296. Liability of States, instrumentalities of States, and State officials for infringement of patents

"(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of a patent under section 271, or for any other violation under this title.

"(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (includes remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 284, attorney fees under section 285, and the additional remedy for infringement of design patents under section 289.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 29 of title 35, United States Code, is amended by adding at the end the following new item:

"Sec. 296. Liability of States, instrumentalities of States, and State officials for infringement of patents.".

SEC. 3. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.

(a) INFRINGEMENT OF PLANT VARIETY PROTECTION.—Section 111 of the Plant Variety Protection Act (7 U.S.C. 2541) is amended—

(1) by inserting "(a)" before "Except as otherwise provided"; and

(2) by adding at the end thereof the following new subsection:

"(b) As used in this section, the term 'perform without authority' includes performance without authority by any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.".

(b) LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.—Chapter 12 of the Plant Variety Protection Act (7 U.S.C. 2561 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 130. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.

"(a) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of plant variety protection under section 111, or for any other violation under this title.

"(b) In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 124, and attorney fees under section 125.".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to violations that occur on or after the date of the enactment of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.