



Sen. Don Harmon

**Filed: 4/11/2011**

09700SB1075sam001

LRB097 04814 AEK 54311 a

1 AMENDMENT TO SENATE BILL 1075

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1075 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Unfair Use of Information Technology Act.

6 Section 2. Findings and declaration of General Assembly.  
7 The General Assembly hereby finds and declares all of the  
8 following:

9 (a) Manufacturers are a vital source of jobs and economic  
10 growth in the State of Illinois. Law-abiding manufacturers in  
11 this State suffer lost sales, market share, and jobs when they  
12 are forced to compete against companies that use stolen or  
13 misappropriated information technology to reduce production  
14 costs and gain a competitive edge.

15 (b) The theft of American information technology is  
16 particularly rampant in foreign markets, reaching as high as

1 90% in some countries. Information technology theft costs the  
2 U.S. economy thousands of jobs and billions of dollars in  
3 economic growth.

4 (c) The use of stolen or misappropriated information  
5 technology unfairly lowers manufacturers' costs of production  
6 by tens if not hundreds of thousands of dollars. Manufacturers  
7 that knowingly use significant amounts of stolen or  
8 misappropriated information technology to reduce costs should  
9 not be allowed to benefit from these illegal acts.

10 (d) Existing laws relating to unfair trade practices do not  
11 adequately address the harms that occur when manufacturers use  
12 stolen or misappropriated information technology to gain an  
13 unfair competitive advantage over companies that play by the  
14 rules.

15 (e) It is the purpose of this Act to enable effective  
16 recourse against manufacturers that obtain an unlawful  
17 competitive advantage by using stolen or misappropriated  
18 information technology to make goods.

19 (f) To accomplish this purpose, law-abiding manufacturers  
20 who have suffered economic harm from a directly competing  
21 manufacturer's sale of products made using stolen or  
22 misappropriated information technology will be allowed to  
23 pursue a cause of action against the company that used the  
24 stolen or misappropriated information technology.

25 (g) The remedies available to the law-abiding manufacturer  
26 in such cases are limited to ensure that the relief obtained is

1 proportional to the harm. To safeguard against the possibility  
2 of frivolous litigation or other negative consequences, this  
3 Act also provides carefully circumscribed procedures and  
4 exemptions designed to protect businesses that make good-faith  
5 efforts to act in accordance with their legal responsibilities.

6 (h) In particular, no action may be brought unless the  
7 manufacturer that allegedly used the stolen or misappropriated  
8 technology is provided with notice about the allegation and  
9 given an opportunity to either cure the violation or establish  
10 that it is not using stolen or misappropriated information  
11 technology.

12 (i) Furthermore, actions may be brought only against  
13 businesses that themselves manufacture, produce, or assemble  
14 articles or products while using stolen or misappropriated  
15 information technology, not against other companies that  
16 merely contract with such businesses for the manufacture of  
17 articles or products.

18 (j) To protect the interests of all businesses, this Act  
19 includes affirmative defenses and other safeguards to make sure  
20 that downstream purchasers and others will not be unfairly  
21 burdened.

22 (k) It is the intent of the General Assembly that this Act  
23 shall be construed in ways that appropriately remedy the  
24 competitive harm that occurs when articles or products  
25 manufactured using stolen or misappropriated information  
26 technology are sold or offered for sale in this State.

1           Section 3. Definitions. As used in this Act, unless the  
2 context clearly requires otherwise:

3           (a) "Article or product" means any tangible article or  
4 product, but excludes: (i) any services sold, offered for sale,  
5 or made available in this State, including free services and  
6 online services; (ii) any product subject to regulation by the  
7 United States Food and Drug Administration and that is  
8 primarily used for medical or medicinal purposes; (iii) food  
9 and beverages; and (iv) restaurant services.

10           (b) "Copyrightable end product" means a work within the  
11 subject matter of copyright as specified in Section 102 of  
12 Title 17, United States Code, and which, for the purposes of  
13 this Act, includes mask works protection as specified in  
14 section 902 of Title 17, United States Code.

15           (c) "Essential component" means a component of an article  
16 or product provided or to be provided to a third party pursuant  
17 to a contract, including a purchase order, without which the  
18 article or product will not perform as intended and for which  
19 there is no substitute component available that offers a  
20 comparable range and quality of functionalities and is  
21 available in comparable quantities and at a comparable price.

22           (d) "Manufacture" means to directly manufacture, produce,  
23 or assemble an article or product subject to Section 5, in  
24 whole or substantial part, but does not include contracting  
25 with or otherwise engaging another person (or that person

1 engaging another person) to develop, manufacture, produce, or  
2 assemble an article or product subject to Section 5.

3 (e) "Material competitive injury" means at least a 3%  
4 retail price difference, over a 4-month time period, between  
5 the article or product made in violation of Section 5 designed  
6 to harm competition and a directly competing article or product  
7 that was manufactured without the use of stolen or  
8 misappropriated information technology.

9 (f) "Retail price" means the retail price of stolen or  
10 misappropriated information technology charged at the time of,  
11 and in the jurisdiction where, the alleged theft or  
12 misappropriation occurred, multiplied by the number of stolen  
13 or misappropriated items used in the business operations of a  
14 person alleged to have violated Section 5.

15 (g) "Stolen or misappropriated information technology"  
16 means hardware or software that the person referred to in  
17 Section 5 acquired, appropriated, or used without the  
18 authorization of the owner of the information technology or the  
19 owner's authorized licensee in violation of applicable law, but  
20 does not include situations in which the hardware or software  
21 alleged to have been stolen or misappropriated was not  
22 available for retail purchase on a stand-alone basis at or  
23 before the time it was acquired, appropriated, or used by such  
24 a person.

25 Information technology is considered to be used in a  
26 person's business operations if the person uses the technology

1 in the manufacture, distribution, marketing, or sales of  
2 articles or products subject to Section 5.

3 Section 5. Unfair use of information technology. Any person  
4 who manufactures an article or product while using stolen or  
5 misappropriated information technology in its business  
6 operations after notice and opportunity to cure as provided in  
7 Section 15 and, with respect to remedies sought under  
8 subsection (f) of Section 20 or under Section 25, causes a  
9 material competitive injury as a result of such use of stolen  
10 or misappropriated information technology, is deemed to engage  
11 in an unfair act where such an article or product is sold or  
12 offered for sale in this State, either separately or as a  
13 component of another article or product, and in competition  
14 with an article or product sold or offered for sale in this  
15 State that was manufactured without violating this Section.

16 A person who engages in such an unfair act, and any  
17 articles or products manufactured by the person in violation of  
18 this Section, is subject to the liabilities and remedial  
19 provisions of this Act in an action by the Attorney General or  
20 any person described in subsection (e) of Section 20, except as  
21 provided in Sections 10, 15, 20, 25, 30, and 40.

22 Section 10. Exceptions.

23 (a) No action may be brought under this Act, and no  
24 liability results, where:

1           (1) the end article or end product sold or offered for  
2 sale in this State and alleged to violate Section 5 is:

3           (A) a copyrightable end product;

4           (B) merchandise manufactured by or on behalf of, or  
5 pursuant to a license from, a copyright owner and which  
6 displays or embodies a name, character, artwork, or  
7 other indicia of or from a work that falls within  
8 subparagraph (A) of this subsection, or merchandise  
9 manufactured by or on behalf of, or pursuant to a  
10 license from, a copyright or trademark owner and which  
11 displays or embodies a name, character, artwork, or  
12 other indicia of or from a theme park, theme park  
13 attraction, or other facility associated with a theme  
14 park; or

15           (C) packaging, carrier media, or promotional or  
16 advertising materials for any end article, end  
17 product, or merchandise that falls within subparagraph  
18 (A) or (B) of this paragraph (1);

19           (2) the allegation that the information technology is  
20 stolen or misappropriated is based on a claim (i) that the  
21 information technology or its use infringes a patent or  
22 misappropriates a trade secret under applicable law or (ii)  
23 that could be brought under any provision of Title 35 of  
24 the United States Code;

25           (3) the allegation that the information technology is  
26 stolen or misappropriated is based on a claim that the

1 defendant's use of the information technology violates the  
2 terms of a license that allows users to modify and  
3 redistribute any source code associated with the  
4 technology free of charge; or

5 (4) the allegation is based on a claim that the person  
6 violated Section 5 by aiding, abetting, facilitating, or  
7 assisting someone else to acquire, appropriate, use, sell,  
8 or offer to sell, or by providing someone else with access  
9 to, information technology without authorization of the  
10 owner of such information technology or the owner's  
11 authorized licensee in violation of applicable law.

12 (b) No injunction may issue against a person other than the  
13 person adjudicated to have violated Section 5, and no  
14 attachment order may issue against articles or products other  
15 than articles or products in which the person alleged to  
16 violate Section 5 holds title. A person other than the person  
17 alleged to violate Section 5 includes any person other than the  
18 actual manufacturer who contracts with or otherwise engages  
19 another person to develop, manufacture, produce, market,  
20 distribute, advertise, or assemble an article or product  
21 alleged to violate Section 5.

22 Section 15. Notice and opportunity to cure.

23 (a) No action may be brought under Section 5 unless the  
24 person subject to Section 5 received written notice of the  
25 alleged use of the stolen or misappropriated information



1 technology from the owner or exclusive licensee of the  
2 information technology or the owner's agent and the person: (1)  
3 failed to establish that its use of the information technology  
4 in question did not violate Section 5; or (2) failed, within 90  
5 days after receiving such a notice, to cease use of the owner's  
6 stolen or misappropriated information technology. However, if  
7 the person commences and thereafter proceeds diligently to  
8 replace the information technology with information technology  
9 whose use would not violate Section 5, such a period must be  
10 extended for an additional period of 90 days, not to exceed 180  
11 days total. The information technology owner or its agent may  
12 extend any period described in this Section.

13 (b) To satisfy the requirements of this Section, a written  
14 notice must, under penalty of perjury:

15 (1) identify the stolen or misappropriated information  
16 technology;

17 (2) identify the lawful owner or exclusive licensee of  
18 the information technology;

19 (3) identify the applicable law the person is alleged  
20 to be violating and state that the notifying party has a  
21 reasonable belief that the person has acquired,  
22 appropriated, or used the information technology in  
23 question without authorization of the owner of the  
24 information technology or the owner's authorized licensee  
25 in violation of such applicable law;

26 (4) to the extent known by the notifying party, state

1 the manner in which the information technology is being  
2 used by the defendant;

3 (5) state the articles or products to which the  
4 information technology relates; and

5 (6) specify the basis and the particular evidence upon  
6 which the notifying party bases such allegation.

7 (c) The written notification shall state, under penalty of  
8 perjury, that the information in the notice is accurate based  
9 on the notifying party's good-faith knowledge, information,  
10 and belief.

11 Section 20. Remedies.

12 (a) No earlier than 90 days after the provision of notice  
13 in accordance with Section 15, the Attorney General, or any  
14 person described in subsection (e) of this Section, may bring  
15 an action against any person that is subject to Section 5:

16 (1) to enjoin violation of Section 5, including by  
17 enjoining the person from selling or offering to sell in  
18 this State articles or products that are subject to Section  
19 5, except as provided in subsection (f) of this Section.  
20 However, such an injunction does not encompass articles or  
21 products to be provided to a third party that establishes  
22 that such a third party has satisfied one or more of the  
23 affirmative defenses set forth in subsection (a) of Section  
24 30 with respect to the manufacturer alleged to have  
25 violated Section 5; or

1           (2) only after a determination by the court that the  
2           person has violated Section 5, to recover the greater of  
3           (i) actual direct damages, which may be imposed only  
4           against the person who violated Section 5; or (ii)  
5           statutory damages of no more than three times the retail  
6           price of the stolen or misappropriated information  
7           technology, which may be imposed only against the person  
8           who violated Section 5.

9           In the event the person alleged to have violated Section 5  
10          has been subject to a final judgment or has entered into a  
11          final settlement, or any products manufactured by such a person  
12          and alleged to violate Section 5 have been the subject of an  
13          injunction or attachment order, in any federal or state court  
14          in this State or any other state, arising out of the same theft  
15          or misappropriation of information technology, the court shall  
16          dismiss the action with prejudice. If such a person is a  
17          defendant in an ongoing action, or any products manufactured by  
18          such a person and alleged to violate Section 5 are the subject  
19          of an ongoing injunction or attachment order, in any federal or  
20          state court in this State or any other state, arising out of  
21          the same theft or misappropriation of information technology,  
22          the court shall stay the action against such a person pending  
23          resolution of the other action. In the event the other action  
24          results in a final judgment or final settlement, the court  
25          shall dismiss the action with prejudice against the person.  
26          Dismissals under this Section shall be res judicata to actions

1 filed against the person alleged to have violated Section 5  
2 arising out of the same theft or misappropriation of  
3 information technology.

4 (b) After determination by the court that a person has  
5 violated Section 5 and entry of a judgment against the person  
6 for violating Section 5, the Attorney General, or a person  
7 described in subsection (e) of this Section, may add to the  
8 action a claim for actual direct damages against a third party  
9 who sells or offers to sell in this State products made by that  
10 person in violation of Section 5, subject to the provisions of  
11 Section 30. However, damages may be imposed against a third  
12 party only if:

13 (1) the third party's agent for service of process was  
14 properly served with a copy of a written notice sent to the  
15 person alleged to have violated Section 5 that satisfies  
16 the requirements of Section 15 at least 90 days prior to  
17 the entry of the judgment;

18 (2) the person who violated Section 5 did not make an  
19 appearance or does not have sufficient attachable assets to  
20 satisfy a judgment against the person;

21 (3) such person either manufactured the final product  
22 or produced a component equal to 30% or more of the value  
23 of the final product;

24 (4) such person has a direct contractual relationship  
25 with the third party respecting the manufacture of such  
26 final product or component; and

1           (5) the third party has not been subject to a final  
2 judgment or entered into a final settlement in any federal  
3 or state court in this State or any other state arising out  
4 of the same theft or misappropriation of information  
5 technology. However, in the event the third party is a  
6 party to an ongoing suit for damages, or has entered an  
7 appearance as an interested third party in proceedings in  
8 rem, in any federal or state court in this State or any  
9 other state arising out of the same theft or  
10 misappropriation of information technology, the court  
11 shall stay the action against the third party pending  
12 resolution of the other action. In the event the other  
13 action results in a final judgment, the court shall dismiss  
14 the action with prejudice against the third party and  
15 dismiss any in rem action as to any articles or products  
16 manufactured for such a third party or that have been or  
17 are to be supplied to such a third party. Dismissals under  
18 this Section shall be res judicata to actions filed against  
19 the person alleged to have violated Section 5 arising out  
20 of the same theft or misappropriation of information  
21 technology.

22           (c) An award of damages against a third party pursuant to  
23 subsection (b) of this Section must be the lesser of the retail  
24 price of the stolen or misappropriated information technology  
25 at issue or \$250,000, less any amounts recovered from the  
26 person adjudicated to have violated Section 5, and paragraph

1 (d) (1) of this Section does not apply to such an award or  
2 recovery against the third party.

3 (d) In an action under this Act, a court may:

4 (1) against the person adjudicated to have violated  
5 Section 5, increase the damages up to 3 times the damages  
6 authorized by paragraph (a) (2) of this Section where the  
7 court finds that the person's use of the stolen or  
8 misappropriated information technology was willful;

9 (2) with respect to an award under subsection (a) of  
10 this Section only, award costs and reasonable attorneys'  
11 fees to: (i) a prevailing plaintiff in actions brought by  
12 an injured person under Section 5; or (ii) a prevailing  
13 defendant in actions brought by an allegedly injured  
14 person; and

15 (3) with respect to an action under subsection (b) of  
16 this Section brought by a private plaintiff only, award  
17 costs and reasonable attorneys' fees to a third party for  
18 all litigation expenses (including, without limitation,  
19 discovery expenses) incurred by that party if it prevails  
20 on the requirement set forth in paragraph (b) (3) of this  
21 Section or who qualifies for an affirmative defense under  
22 Section 30 of this Act; provided, however, that in a case  
23 in which the third party received a copy of the  
24 notification described in paragraph (b) (1) of this Section  
25 at least 90 days before the filing of the action under  
26 subsection (b) of this Section, that with respect to a

1 third party's reliance on the affirmative defenses set  
2 forth in paragraphs (a)(3) and (a)(5) of Section 30, the  
3 court may award costs and reasonable attorneys' fees only  
4 if all of the conduct on which the affirmative defense is  
5 based was undertaken by the third party, and the third  
6 party notified the plaintiff of the conduct, prior to the  
7 end of the 90-day period.

8 (e) A person is deemed to have been injured by the sale or  
9 offer for sale of a directly competing article or product  
10 subject to Section 5 if the person establishes by a  
11 preponderance of the evidence that:

12 (1) such a person manufactures articles or products  
13 that are sold or offered for sale in this State in direct  
14 competition with articles or products that are subject to  
15 Section 5;

16 (2) such a person's articles or products were not  
17 manufactured using stolen or misappropriated information  
18 technology of the owner of the information technology;

19 (3) the person suffered economic harm, which may be  
20 shown by evidence that the retail price of the stolen or  
21 misappropriated information technology was \$20,000 or  
22 more; and

23 (4) if the person is proceeding in rem or seeks  
24 injunctive relief, that the person suffered material  
25 competitive injury as a result of the violation of Section  
26 5.

1           (f) (1) If the court determines that a person found to have  
2 violated Section 5 lacks sufficient attachable assets in this  
3 State to satisfy a judgment rendered against it, the court may  
4 enjoin the sale or offering for sale in this State of any  
5 articles or products subject to Section 5, except as provided  
6 in subsection (b) of Section 10.

7           (2) To the extent that an article or product subject to  
8 Section 5 is an essential component of a third party's article  
9 or product, the court shall deny injunctive relief as to such  
10 an essential component, provided that the third party has  
11 undertaken good faith efforts within the third party's rights  
12 under its applicable contract with the manufacturer to direct  
13 the manufacturer of the essential component to cease the theft  
14 or misappropriation of information technology in violation of  
15 Section 5, which may be satisfied, without limitation, by the  
16 third party issuing a written directive to the manufacturer  
17 demanding that it cease the theft or misappropriation and  
18 demanding that the manufacturer provide the third party with  
19 copies of invoices, purchase orders, licenses, or other  
20 verification of lawful use of the information technology at  
21 issue.

22           (g) The court shall determine whether a cure period longer  
23 than the period reflected in Section 15 would be reasonable  
24 given the nature of the use of the information technology that  
25 is the subject of the action and the time reasonably necessary  
26 either to bring such use into compliance with applicable law or



1 to replace the information technology with information  
2 technology that would not violate Section 5. If the court deems  
3 that a longer cure period would be reasonable, then the action  
4 shall be stayed until the end of that longer cure period. If by  
5 the end of that longer cure period, the defendant has  
6 established that its use of the information technology in  
7 question did not violate Section 5, or the defendant ceased use  
8 of the stolen or misappropriated information technology, then  
9 the action must be dismissed.

10 Section 25. In rem jurisdiction.

11 (a) In a case in which the court is unable to obtain  
12 personal jurisdiction over a person subject to Section 5, the  
13 court may proceed in rem against any articles or products  
14 subject to Section 5 sold or offered for sale in this State in  
15 which the person alleged to have violated Section 5 holds  
16 title. Except as provided in subsection (b) of Section 10 and  
17 subsections (b) through (d) of this Section, all such articles  
18 or products are subject to attachment at or after the time of  
19 filing a complaint, regardless of the availability or amount of  
20 any monetary judgment.

21 (b) At least 90 days prior to the enforcement of an  
22 attachment order against articles or products pursuant to  
23 subsection (a) of this Section, the court shall notify any  
24 person in possession of the articles or products of the pending  
25 attachment order. Prior to the expiration of the 90-day period,

1 any person for whom the articles or products were manufactured,  
2 or to whom the articles or products have been or are to be  
3 supplied, pursuant to an existing contract or purchase order,  
4 may:

5 (1) establish that the person has satisfied one or more  
6 of the affirmative defenses set forth in subsection (a) of  
7 Section 30 with respect to the manufacturer alleged to have  
8 violated Section 5, in which case the attachment order must  
9 be dissolved only with respect to those articles or  
10 products that were manufactured for such a person, or have  
11 been or are to be supplied to such a person, pursuant to an  
12 existing contract or purchase order; or

13 (2) post a bond with the court equal to the retail  
14 price of the allegedly stolen or misappropriated  
15 information technology or \$25,000, whichever is less, in  
16 which case the court shall stay enforcement of the  
17 attachment order against the articles or products and shall  
18 proceed on the basis of its jurisdiction over the bond. The  
19 person posting the bond shall recover the full amount of  
20 such bond, plus interest, after the issuance of a final  
21 judgment.

22 (c) In the event the person posting the bond pursuant to  
23 paragraph (b)(2) of this Section is entitled to claim an  
24 affirmative defense in Section 30, and that person establishes  
25 with the court that the person is entitled to any affirmative  
26 defense, the court shall award costs and reasonable attorneys'

1 fees to the person posting the bond and against the plaintiff  
2 in the event the plaintiff proceeds with an action pursuant to  
3 subsection (b) of Section 20 against the person posting the  
4 bond.

5 (d) In the event that the court does not provide  
6 notification as described in subsection (b) of this Section,  
7 the court, upon motion of any third party, shall stay the  
8 enforcement of the attachment order for 90 days as to articles  
9 or products manufactured for the third party, or that have been  
10 or are to be supplied to the third party, pursuant to an  
11 existing contract or purchase order, during which 90-day period  
12 the third party may avail itself of the options set forth in  
13 paragraphs (b) (1) and (b) (2) of this Section.

14 Section 30. Affirmative defenses for third parties.

15 (a) A court may not award damages against any third party  
16 pursuant to subsection (b) of Section 20 where that party,  
17 after having been afforded reasonable notice of at least 90  
18 days by proper service upon such party's agent for service of  
19 process and opportunity to plead any of the affirmative  
20 defenses set forth in this subsection, establishes by a  
21 preponderance of the evidence any of the following:

22 (1) the person is the end consumer or end user of an  
23 article or product subject to Section 5, or acquired the  
24 article or product after its sale to an end consumer or end  
25 user;

1           (2) the person is a business with annual revenues not  
2           in excess of \$50,000,000;

3           (3) the person has made commercially reasonable  
4           efforts to implement practices and procedures to require  
5           its direct manufacturers, in manufacturing articles or  
6           products for such person, not to use stolen or  
7           misappropriated information technology in violation of  
8           Section 5. A person may satisfy this paragraph (3) by:

9           (A) adopting and undertaking commercially  
10           reasonable efforts to implement a code of conduct or  
11           similar written requirements, which are applicable to  
12           the person's direct manufacturers, that prohibit use  
13           of stolen or misappropriated information technology by  
14           such a manufacturer, subject to a right of audit, and  
15           such person either: (i) has a practice of auditing its  
16           direct manufacturers on a periodic basis in accordance  
17           with generally accepted industry standards; or (ii)  
18           requires in its agreements with its direct  
19           manufacturers that they submit to audits by a third  
20           party, which may include a third-party association of  
21           businesses representing the owner of the stolen or  
22           misappropriated intellectual property, and further  
23           provides that a failure to remedy any deficiencies  
24           found in such an audit that constitute a violation of  
25           the applicable law of the jurisdiction where the  
26           deficiency occurred constitutes a breach of the

1 contract, subject to cure within a reasonable period of  
2 time; or

3 (B) adopting and undertaking commercially  
4 reasonable efforts to implement a code of conduct or  
5 similar written requirements, which are applicable to  
6 the person's direct manufacturers, that prohibit use  
7 of stolen or misappropriated information technology by  
8 such manufacturer, and the person undertakes practices  
9 and procedures to address compliance with the  
10 prohibition against the use of the stolen or  
11 misappropriated information technology in accordance  
12 with the applicable code of conduct or written  
13 requirements;

14 (4) the person does not have a contractual relationship  
15 with the person alleged to have violated Section 5  
16 respecting the manufacture of the articles or products  
17 alleged to have been manufactured in violation of Section  
18 5; or

19 (5) the person acquired the articles or products:

20 (A) and had either: (i) a code of conduct or other  
21 written document governing the person's commercial  
22 relationships with the manufacturer alleged to have  
23 violated Section 5 and which includes commitments,  
24 such as general commitments to comply with applicable  
25 laws, that prohibit use of the stolen or  
26 misappropriated information technology by such

1 manufacturer; or (ii) written assurances from the  
2 manufacturer of the articles or products that the  
3 articles or products, to the manufacturer's reasonable  
4 knowledge, were manufactured without the use of stolen  
5 or misappropriated information technology in the  
6 manufacturer's business operations; provided, however,  
7 with respect to both items (i) and (ii) of this  
8 subparagraph (a)(5)(A), that within 180 days of  
9 receiving written notice of the judgment against the  
10 manufacturer for violation of Section 5 and a copy of a  
11 written notice that satisfies the requirements of  
12 Section 15, the third party undertakes commercially  
13 reasonable efforts to do any of the following:

14 (I) exchange written correspondence confirming  
15 that such manufacturer is not using such stolen or  
16 misappropriated information technology in  
17 violation of Section 5, which may be satisfied,  
18 without limitation, by obtaining written  
19 assurances from the manufacturer accompanied by  
20 copies of invoices, purchase orders, licenses, or  
21 other verification of lawful use of the  
22 information technology at issue;

23 (II) direct the manufacturer to cease the  
24 theft or misappropriation, which may be satisfied,  
25 without limitation, by the third party issuing a  
26 written directive to the manufacturer demanding

1           that it cease such theft or misappropriation and  
2           demanding that the manufacturer provide the third  
3           party with copies of invoices, purchase orders,  
4           licenses, or other verification of lawful use of  
5           the information technology at issue; and for  
6           purposes of clarification, the third party need  
7           take no additional action to fully avail itself of  
8           this affirmative defense; or

9           (III) in a case in which the manufacturer has  
10          failed to cease the theft or misappropriation  
11          within such 180-day period and the third party has  
12          not fulfilled either option (I) or (II) of this  
13          subparagraph (a) (5) (A), cease the future  
14          acquisition of such articles or products from such  
15          manufacturer during the period that such  
16          manufacturer continues to engage in such theft or  
17          misappropriation subject to Section 5 where doing  
18          so would not constitute a breach of an agreement  
19          between the person and the manufacturer for the  
20          manufacture of the articles or products in  
21          question that was entered into on or before 180  
22          days after the effective date of this Act;

23          (B) pursuant to an agreement between the person and  
24          a manufacturer for the manufacture of the articles or  
25          products in question that was entered into before 180  
26          days after the effective date of this Act; provided

1           that within 180 days of receiving written notice of the  
2           judgment against the manufacturer for violation of  
3           Section 5 and a copy of a written notice that satisfies  
4           the requirements of Section 15, the person undertakes  
5           commercially reasonable efforts to do any of the  
6           following:

7                   (I) obtain from such manufacturer written  
8                   assurances that such manufacturer is not using  
9                   such stolen or misappropriated information  
10                  technology in violation of Section 5, which may be  
11                  satisfied, without limitation, by obtaining  
12                  written assurances from the manufacturer  
13                  accompanied by copies of invoices, purchase  
14                  orders, licenses, or other verification of lawful  
15                  use of the information technology at issue;

16                  (II) direct the manufacturer to cease such  
17                  theft or misappropriation, which may be satisfied,  
18                  without limitation, by the third party issuing a  
19                  written directive to the manufacturer demanding  
20                  that it cease such theft or misappropriation and  
21                  demanding that the manufacturer provide the third  
22                  party with copies of invoices, purchase orders,  
23                  licenses, or other verification of lawful use of  
24                  the information technology at issue; and for  
25                  purposes of clarification, the third party need  
26                  take no additional action to fully avail itself of



1           this affirmative defense; or

2                   (III) in a case in which the manufacturer has  
3           failed to cease the theft or misappropriation  
4           within such 180-day period and the third party has  
5           not fulfilled either option (I) or (II) of this  
6           subparagraph (a) (5) (B), cease the future  
7           acquisition of such articles or products from such  
8           manufacturer during the period that such  
9           manufacturer continues to engage in such theft or  
10          misappropriation subject to Section 5 where doing  
11          so would not constitute a breach of such agreement.

12          (b) A third party shall have the opportunity to be heard  
13          regarding whether an article or product is an essential  
14          component provided or to be provided to such third party, and  
15          shall have the right to file a motion to dismiss any action  
16          brought against it under subsection (b) of Section 20.

17          (c) The court may not enforce any award for damages against  
18          such a third party until after the court has ruled on that  
19          party's claim of eligibility for any of the affirmative  
20          defenses set out in this Section, and prior to such a ruling  
21          may allow discovery, in an action under subsection (b) of  
22          Section 20, only on the particular defenses raised by the third  
23          party.

24          (d) The court shall allow discovery against a third party  
25          on an issue only after all discovery on that issue between the  
26          parties has been completed and only if the evidence produced as

1 a result of the discovery does not resolve an issue of material  
2 dispute between the parties.

3 (e) Any confidential or otherwise sensitive information  
4 submitted by a party pursuant to this Section is subject to a  
5 protective order.

6 Section 35. Certain Sections not applicable. A violation of  
7 this Act may not be considered a violation of the Consumer  
8 Fraud and Deceptive Business Practices Act and Sections 1  
9 through 12 of the Consumer Fraud and Deceptive Business  
10 Practices Act do not apply to this Act. The remedies provided  
11 under this Act are the exclusive remedies for the parties.

12 Section 40. Transition period. A court may not enforce an  
13 award of damages against a third party pursuant to subsection  
14 (b) of Section 20 for a period of 18 months from the effective  
15 date of this Act.

16 Section 45. Severability. If any provision of this Act or  
17 its application to any person or circumstance is held invalid,  
18 the remainder of this Act or the application of the provision  
19 to other persons or circumstances is not affected.

20 Section 99. Effective date. This Act takes effect 90 days  
21 after becoming law."