

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1331 w/CS Movie Theaters/Recording Devices

**SPONSOR(S):** Bogdanoff

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1928

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| REFERENCE                                      | ACTION                | ANALYST         | STAFF DIRECTOR   |
|------------------------------------------------|-----------------------|-----------------|------------------|
| 1) <u>Criminal Justice</u>                     | <u>5 Y, 0 N</u>       | <u>Kramer</u>   | <u>De La Paz</u> |
| 2) <u>Public Safety &amp; Crime Prevention</u> | <u>13 Y, 0 N w/CS</u> | <u>Kramer</u>   | <u>De La Paz</u> |
| 3) <u>Commerce</u>                             | <u>16 Y, 0 N</u>      | <u>McDonald</u> | <u>Billmeier</u> |
| 4) _____                                       | _____                 | _____           | _____            |
| 5) _____                                       | _____                 | _____           | _____            |

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### SUMMARY ANALYSIS

HB 1331, with committee substitute, makes it a third degree felony to knowingly operate the audiovisual recording function of any device in a motion picture theater, while a motion picture is being exhibited, without the express written consent of the theater owner. The offense is punishable by up to five years in prison and a by a fine of up to \$25,000.

The bill also authorizes a theater owner to detain, in a reasonable manner and for a reasonable period of time, any person who the owner has probable cause to believe has violated or is violating the newly created section. A law enforcement officer must be immediately called to the scene. The bill provides that the owner may not be held liable in any civil or criminal action relating to false arrest, false imprisonment or unlawful detention arising out of measures taken in the course of detaining the person while awaiting the arrival of a law enforcement officer, unless the plaintiff can show by clear and convincing evidence that the methods were manifestly unreasonable or the period of detention was unreasonably long.

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. To the extent that this bill deters people from recording motion pictures in a theater and subsequently duplicating the recording for sale, it may have a positive fiscal impact on the motion picture industry.

The bill takes effect July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1331d.com.doc

**DATE:** April 13, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                                         |                             |                                         |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### ***Unauthorized Recording of Motion Pictures:***

The Motion Picture Association of America (MPAA) estimates that the motion picture industry in the United States loses more than \$3 billion annually in potential worldwide revenue due to the unauthorized recording of motion pictures.<sup>1</sup> One of the methods used to create unauthorized recordings is commonly cited as “camcording.” Camcording entails the use of a hand-held video camera to record a motion picture film off the theater screen and then copy the film onto blank videocassettes or optical discs for distribution.

##### ***Federal Copyright Law:***

Federal law provides copyright protection for “original works of authorship fixed in any tangible medium of expression” including motion pictures.<sup>2</sup> Subject to specified exceptions, a copyright owner has the exclusive right to reproduce or authorize the reproduction of the work.<sup>3</sup> Federal law provides for civil remedies for infringement of a copyright including either actual damages or damages specified in statute.<sup>4</sup> Further, any person who willfully infringes a copyright either for commercial advantage or private gain or reproduces or distributes copies worth a certain value, commits a criminal offense.<sup>5</sup>

Congress has preempted “all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright...in works of authorship that are fixed in a tangible medium of

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<sup>1</sup> Motion Picture Association of America, *Anti-Piracy*, at <http://www.mpaa.org/anti-piracy> (last visited Mar. 10, 2004).

<sup>2</sup> 17 U.S.C. 102(a)(6).

<sup>3</sup> 17 U.S.C. 106.

<sup>4</sup> See generally, 17 U.S.C. 504.

<sup>5</sup> 17 U.S.C. 506. Federal law imposes criminal penalties upon a person who willfully infringes a copyright by the reproduction or distribution of copyrighted works (17 U.S.C. s. 506(a)(2)). A violation involving the reproduction or distribution of at least 10 copies of one or more copyrighted works during any 180-day period, which have a total retail value of \$2,500 or more, is punishable by up to 3 years in federal prison and up to a \$250,000 fine (18 U.S.C. s. 2319(c) and s. 3571(b)). A second or subsequent offense is punishable by up to 6 years in federal prison. Lesser violations involving the reproduction or distribution of at least one copy of one or more copyrighted works during any 180-day period, which have a total retail value of more than \$1,000, are punishable by up to 1 year in federal prison and up to a \$100,000 fine. In addition, federal law imposes enhanced criminal penalties upon a person who willfully infringes a copyright for purposes of commercial advantage or private financial gain (17 U.S.C. s. 506(a)(1)). A violation involving the reproduction or distribution of at least 10 copies of one or more copyrighted works during any 180-day period, which have a total retail value of more than \$2,500, is punishable by up to 5 years in federal prison and up to a \$250,000 fine (18 U.S.C. s. 2319(b) and s. 3571(b)). A second or subsequent offense is punishable by up to 10 years in federal prison. Lesser violations are punishable by up to 1 year in federal prison and up to a \$100,000 fine.

expression and come within the subject matter of copyright...".<sup>6</sup> Accordingly, federal law essentially precludes states from enforcing penalties for copyright violations and requires, in most instances, criminal prosecution for copyright infringement under federal law.

Florida law does not specifically criminalize the act of using a recording device in a movie theater. In New York, it is unlawful to operate a recording device in a motion picture theater without permission of the operator of the theater.<sup>7</sup>

***Effect of HB 1331:***

The bill makes it a third degree felony for a person to knowingly operate the audiovisual recording function<sup>8</sup> of any device in a motion picture theater<sup>9</sup> while a motion picture is being exhibited without the express written consent of the theater owner.<sup>10</sup> The offense is punishable by up to five years in prison and a fine of up to \$25,000.

The bill also authorizes a theater owner to detain,<sup>11</sup> in a reasonable manner and for a reasonable period, any person who the owner has probable cause to believe has violated or is violating the newly created section. A law enforcement officer must be called to the scene immediately after the person has been detained. The bill provides that the owner may not be held liable in any civil or criminal action relating to false arrest, false imprisonment or unlawful detention arising out of measures taken in the course of detaining the person while awaiting the arrival of a law enforcement officer, unless the plaintiff can show by clear and convincing evidence that the methods were manifestly unreasonable or the period of detention was unreasonably long.

The bill provides that the section does not prevent an employee or agent of an investigative agency, law enforcement agency, protective services agency, or intelligence gathering agency from operating an audiovisual recording device in a motion picture theater where a motion picture is being exhibited as part of a lawfully authorized investigative, protective, law enforcement, or intelligence gathering activity.

**C. SECTION DIRECTORY:**

Section 1. Creates an undesignated section of statute which relates to use of a recording device in a motion picture theater.

Section 2. Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>6</sup> 17 U.S.C. 301(a).

<sup>7</sup> New York Penal Law, section 275.32.

<sup>8</sup> The bill defines the term "audiovisual recording function" to mean "the capability of a camera, an audio or video recorder, or any other device to record, transfer sounds or images, or transmit a motion picture or any part thereof by means of any technology now known or later developed."

<sup>9</sup> The bill defines the term "motion picture theater" to mean "a movie theater, screening room, or other venue when used primarily for the exhibition of a motion picture."

<sup>10</sup> The bill defines the term "theater owner" to mean the "owner, operator, or lessee of a motion picture theater and includes an employee or agent of the theater owner."

<sup>11</sup> Section 812.015, F.S., authorizes a merchant or a law enforcement officer to detain an offender in a reasonable manner and for a reasonable length of time when the merchant or officer has probable cause to believe that a retail theft has been committed and that the property can be recovered. If a merchant or a merchant's employee takes an offender into custody, a law enforcement officer must be immediately called to the scene.

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of the bill on the Department of Corrections. Traditionally, the conference has determined that a third degree felony that is not ranked in the offense severity ranking chart of the Criminal Punishment Code would result in a lowest permissible sentence of any non-state prison sanction and, therefore, would have an insignificant prison bed impact.

The bill does not designate a state agency as responsible for enforcement or prosecution of violations. State attorneys and local law enforcement agencies may experience a moderate workload increase associated with the enforcement and prosecution of violations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that this bill deters people from recording motion pictures in a theater and subsequently duplicating the recording for sale, it may have a positive fiscal impact on the motion picture industry.

D. FISCAL COMMENTS:

See above.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Subcommittee on Criminal Justice recommended the adoption of an amendment that made several changes. The amendment removed any reference to the "licensor" of the motion picture. The amendment also provided that the offense can only be committed if the recording is done *while a motion picture is being exhibited*. The amendment modified the language relating to the authority of a theater owner to detain an offender by requiring that the owner have probable cause to believe that the offense is being or has been committed and by requiring that a law enforcement officer be called to the scene immediately after a person has been detained. The amendment also clarifies the liability of the theater owner who detains an offender. The Committee on Public Safety & Crime Prevention adopted the recommended amendment.