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RECORDING MOVIES AT THE CINEMA: PROHIBIT

House Bill 5336 (Substitute H-1)

Sponsor: Rep. John Stakoe

House Bill 5347 (Substitute H-1)

Sponsor: Rep. Mike Nofs

Committee: Criminal Justice

First Analysis (12-16-03)

THE APPARENT PROBLEM:

According to the Motion Picture Association of America, "camcorder piracy" is on the increase. Basically, it begins with a person sneaking a camcorder or other recording device into a movie theater and making a bootleg copy of a new movie. From that one copy, several dozen master copies may be created and then sold to a lab operator (for approximately \$100 each). The lab operator then makes thousands of copies. From ten master copies, 100,000 pirated discs can be made. Lab operators then sell the copies to individual distributors, who in turn sell to street vendors, Internet sales sites, gas stations, discount stores, and even vendors at flea markets. These vendors then sell the pirated discs to the general public, both in this country and abroad.

Apparently, 125 laboratories making copies from master discs have been investigated in the first nine months of 2003 with almost half a million pirated discs being seized, as compared to only 62 labs being investigated during the same time period last year and a seizure of 137,000 discs. Sometimes pirated copies of movies are released over the Internet or for sale before the movie has its official release. Over 50 major movie titles were stolen in the US prior to their general release between May of 2002 and May of 2003.

Obviously, this poses a significant financial problem for those in the movie industry. Films are expensive to make and distribute. Revenue from ticket sales and VCR tape and DVD rentals and sales are needed to cover production and distribution costs, salaries of actors, and provide a profit for investors. Pirated copies of movies reduce the revenue that a movie can generate, and even more so when made at a prescreening and released at the same time, if not before, a movie's general release. This has a far reaching effect beyond earnings for those in the

movie industry, as it also affects earnings for all their employees, local theaters and their employees, and the communities in which these employees live and spend their salaries.

However, other than a federal law regarding copyright infringements, most states do not have a criminal law prohibiting the making of bootleg movies. Therefore, if an employee or manager of a movie theater observes someone recording the movie, local law enforcement officers have no legal authority to remove or ticket the person. Recently, four states (California, New York, Pennsylvania, and Wisconsin) and the District of Columbia have enacted anti-camcorder laws. Legislation has been introduced to allow Michigan to join with those jurisdictions and make it a criminal offense to record a movie in a movie theater.

THE CONTENT OF THE BILLS:

The bills would prohibit the practice of using a camcorder or other recording device inside a cinema or other venue to record the movie and/or trailers being shown. The bills would take effect June 1, 2004. Specifically, the bills would do the following:

House Bill 5347 would add a new section to the Michigan Penal Code (MCL 750.465a) to make it a crime to knowingly operate an audiovisual recording function of a device in a facility where a motion picture was being exhibited without the consent of the owner or lessee of the facility and of the licensor of the motion picture. A first offense would be a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than \$10,000, or both. A second offense would be a felony punishable by up to two years imprisonment, a fine

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of not more than \$20,000, or both. A third or subsequent offense would be punishable by imprisonment for not more than four years, a fine up to \$40,000, or both. "Audiovisual recording function" would mean the capability of a device to record or transmit a motion picture or any part of a motion picture by technological means.

The owner or lessee of the facility where the movie was being shown, the authorized agent or employee of the owner or lessee, or the licensor of the movie being shown who alerted a law enforcement agency of an alleged violation of the bill would not be liable in any civil action arising out of measures taken in the course of detaining a person believed in good faith to be recording the movie while awaiting the arrival of the law enforcement authorities. However, an action could be brought if the plaintiff showed by clear and convincing evidence that the measures used in the detention were manifestly unreasonable and/or the period of detention was unreasonably long.

The bill would specify that it would not prevent any lawfully authorized state or federal investigative, law enforcement, protective, or intelligence-gathering employee or agent from operating the audiovisual recording function of a device in a facility where a motion picture was being shown as part of an investigative, protective, law enforcement, or intelligence-gathering activity. Further, a person could be charged with, convicted of, or punished for any other violation of law that proscribed conduct described in the bill and that carried a greater penalty.

House Bill 5336 would place the corresponding sentencing guidelines within the Code of Criminal Procedure (MCL 777.16w). Under the bill, a second offense of operating an audio visual recording device in a motion picture facility would be a Class G felony against property with a maximum term of imprisonment of two years and a third or subsequent offense would be a Class F against property with a maximum term of imprisonment of four years.

The bill is tie-barred to House Bill 5347.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an indeterminate fiscal impact on the state and local units of government. The impact would depend on how the bills affected prosecutorial charging practices, numbers and types of convictions, and sentences imposed. Offenders convicted of felony offenses may present costs to the state for prison incarceration or felony probation supervision,

or to local units of government for incarceration in a jail. Misdemeanor offenders are a local responsibility. (12-15-03)

ARGUMENTS:

For:

As technology advancements decrease the size of recording devices and increase quality, the problem of bootleg movies will also increase. In addition, the operation of copying and distributing the pirated movies is becoming increasingly sophisticated and organized. In short, it no longer is just a teenager sneaking in Dad's camcorder and selling a few scratchy copies to acquaintances. Already, the first nine months of this year has seen an explosion in pirated movies from last year. These bootleg movies are sold or passed along at flea markets, discount stores, gas stations, by street vendors, and over the Internet at auction sites, peer-to-peer networks, file transfer protocol (FTP) sites, and chat rooms. Sometimes movies appear at these venues before their general release in the United States or overseas. The financial losses this poses to the movie industry (estimated to be in the tens or hundreds of millions) affect more than just those at the top of the production and distribution houses. All of the investors and employees of these companies and movie theaters are affected as well, along with the communities where they live and pay taxes.

It would seem that the prudent approach would be to enact laws that go to the source of the problem (and the first link in the chain) – the person who, with a camcorder or other recording device, films a movie in a movie theater or other facility. However, most states, including Michigan, do not specifically criminalize this activity. Though federal copyright laws can provide some relief (if the person can be caught), the most effective measure would be to stop the person who is doing the actual filming.

The bills would give state and local law enforcement officers the authority to arrest a person found filming a movie, and prosecutors would have an effective tool in stiff fines and possible jail or prison time. These penalties should act as a strong deterrent to discourage someone from this activity in the first place and provide an appropriate punishment for those who succumb to the lure of "easy money". A high fine also mitigates the tendency of criminals to view such fines as merely a "cost of business".

Movie theater owners and their employees would be protected from fear of lawsuits arising out of

detaining a person caught filming a movie until the police arrived. However, if unreasonable measures were used or the length of time a person was detained was excessive (similarly to shoplifting cases), a detainee could sue the theater owner and/or employee. Further, the bill would protect the right of law enforcement agencies to conduct surveillance operations.

Though it is probably impossible to completely eliminate the pirating of movies, the bills should be successful in shutting down more of these operations.

Against:

The stated intent of House Bill 5347 is to criminalize the action of using a camcorder to record a movie as it is being shown in a movie theater. However, as written, the language is so broad as to capture innocent retailers and news agencies. For example, though supposedly targeted at recording movies in movie theaters, the bill criminalizes this activity in “a facility where a motion picture is being exhibited.” A problem exists, therefore, for the many electronics retailers who use VCR tapes and DVDs of movies to demonstrate the capabilities of their TVs, VCRs, and DVDs that are for sale. To apply the bill’s prohibitions and penalties to these retailers would be inappropriate and unfair to consumers who need to see the recording and playing capabilities of equipment before making a purchase. In addition, as human interest pieces, news agencies occasionally film small bits of a newly released and highly anticipated film along with the reaction of the movie viewers (e.g., the releases of the first Harry Potter and Lord of the Rings films). Again, this practice hardly constitutes movie piracy, but still could trigger penalties under the bill. If the intent is to prevent the sale of bootleg movies by targeting the illicit recording of movies in movie theaters, then the bill needs to be amended to narrow the scope to those activities only.

Response:

Part of the difficulty in finding the “right” terminology is that movies are not only shown in “movie theaters”, but also in community centers, libraries, and on college campuses. This is particularly true for independent films.

POSITIONS:

The Motion Picture Association of America supports the bills. (12-10-03)

A representative of the National Association of Theater Owners/Michigan Chapter indicated support for the bills. (12-10-03)

The Consumer Electronics Association (CEA) opposes the bills. (12-9-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.