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BILL ANALYSIS

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Senate Bills 1386 and 1387 (as introduced 9-14-04)
Sponsor: Senator Alan Sanborn
Committee: Judiciary

Date Completed: 9-20-04

CONTENT

Senate Bill 1386 would amend the Revised Judicature Act to provide civil immunity to certain people who detained an individual alleged to have committed a motion picture recording violation (proposed by House Bill 5347).

Senate Bill 1387 would amend the Revised Judicature Act to specify that a person who committed a motion picture recording violation would be liable for actual and exemplary damages to a person injured by the violation.

The bills are tie-barred to House Bill 5347. (House Bill 5347 (H-1), as passed by the House, would establish criminal penalties for knowingly operating a device's audiovisual recording function in a facility where a motion picture was being exhibited, without the consent of the facility's owner or lessee and of the motion picture's licensor.)

Under Senate Bill 1387, "motion picture recording violation" would mean a violation of Section 465a of the Michigan Penal Code (proposed by House Bill 5347). "Person injured by a motion picture recording violation" would include, but not be limited to, the licensor of the motion picture that was the subject of the violation and the owner or lessee of the facility in which the motion picture was being shown.

The bills would take effect 90 days after their enactment.

Senate Bill 1386

Under the bill, if the owner or lessee of a facility in which a motion picture was being shown, the licensor of the motion picture, or the owner's, lessee's, or licensor's authorized agent or employee alerted a law enforcement agency of an alleged motion picture recording violation and took measures, while awaiting the arrival of law enforcement authorities, to detain an individual whom he or she had probable cause to believe committed the violation, the owner, lessee, licensor, agent, or employee would not be liable in a civil action arising out of the measures taken. This immunity from liability would not apply, however, if the plaintiff showed that the measures taken were unreasonable and/or the period of detention was unreasonably long.

Senate Bill 1387

The bill specifies that a person who committed an act constituting a motion picture recording violation would be liable to a person injured by the violation for one or more of the following:

- Actual damages.
- Exemplary damages of not more than \$1,000.
- Exemplary damages of not more than \$50,000, if the person who committed the violation were acting for direct or indirect commercial advantage or financial gain.
- Reasonable attorney fees and costs.

If a person who committed a motion picture recording violation were an unemancipated minor who lived with his or her parent or parents, the parent or parents also would be liable to a person injured by the violation.

A person injured by a motion picture recording violation could recover the damages only if a formal incident report containing factual allegations that the defendant committed a violation, were filed with a local law enforcement agency with jurisdiction over the location where the violation took place. Recovery of damages, however, would not depend on the outcome of a criminal prosecution.

A person injured by a motion picture recording violation could bring an action to enjoin a person from the unauthorized recording, receipt, or transmission of a recording or transmission of a motion picture or part of a motion picture obtained or made by a violation, or from committing a violation. A person could bring an action regardless of whether the person had suffered or would suffer actual damages.

An action under the bill would be in addition to any other criminal or civil penalties or remedies provided by law.

Proposed MCL 600.2917a (S.B. 1386)
Proposed MCL 600.2953a (S.B. 1387)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

To the extent that Senate Bills 1386 and 1387 would limit and expand, respectively, the circumstances under which someone can pursue civil litigation, they would have an indeterminate fiscal impact on the judiciary.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.