

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1308

SPONSOR: Senator Webster

SUBJECT: Optical Discs

DATE: March 22, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Olafson</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill requires that Florida manufacturers of optical discs for commercial purposes permanently mark their discs with an identification mark that identifies the name of the manufacturer and the state in which the disc was manufactured.

Manufacturers who produce more than 10 discs for resale and fail to provide the required identification mark face mandatory fines ranging from \$500 to \$50,000. Persons who knowingly buy, sell, receive, transfer, or possess for the purposes of sale or rental an optical disc that has a missing or altered identification mark face up to one year in prison or a fine up to \$10,000, or both. Persons who knowingly remove, deface, cover, alter, or destroy the identification mark may be punished by up to one year in prison or a fine of \$50,000, or both.

This bill creates a yet unnumbered section of the Florida Statutes.

## II. Present Situation:

An optical disc is a plastic-coated disc that stores digital data, such as music or text, as tiny pits etched into the surface and is read with a laser scanning the surface. The use of compact discs (CDS), and Digital Video Discs (DVDs) to record and store music, software, and movies has increased dramatically in recent years. Current technology provides average citizens with the ability to record and store a variety of data with a home computer or a CD recorder. This technology also provides lawbreakers with the ability to record copyrighted intellectual property for future illegal sale. When an optical disc does not have any mark identifying the manufacturer, the actual source of the "pirated" optical discs is virtually impossible to ascertain.

### III. Effect of Proposed Changes:

The bill requires that Florida manufacturers of optical discs for commercial purposes permanently mark their discs with an identification mark that identifies the name of the manufacturer and the state in which the disc was manufactured.

“Commercial purposes” is defined in the bill as the manufacture of at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for purposes of sale in this state by that person or other persons. The bill defines “manufacture” as the replication of the physical optical disc or production of the master used in any optical disc replication process. An “optical disc” is defined as a disc capable of being read by a laser or other light source on which data is stored in digital form, including, but not limited to, discs known as compact discs, recordable compact discs, and digital video discs.

The identifying mark required in the bill may be made by etching, die stamping, or “other permanent method” and must be visible to the naked eye. Industry representatives indicated that the term “other permanent method” is flexible enough to allow “garage bands” to mark their manufactured discs with a permanent marker.

Manufacturers who fail to provide the required identification mark shall be subject to a fine of not less than \$500 and not more than \$5,000 for a first offense, and a fine of between \$5,000 and \$50,000 for a second and all subsequent offenses.

Persons who knowingly buy, sell, receive, transfer, or possess for the purposes of sale or rental an optical disc that has been manufactured in Florida with no identification mark or with an identification mark that has been removed, defaced, covered, altered, or destroyed commit a misdemeanor of the first degree. Such violations are punishable by up to a year imprisonment or a fine up to \$10,000, or both.

Persons who knowingly remove, deface, cover, alter, or destroy the identification mark commit a misdemeanor in the first degree, punishable by up to a year imprisonment or a fine of \$50,000 or both.

The production of discs for internal use, testing or review or the manufacture of blank optical discs is specifically exempted from the requirements of this bill.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Large manufacturers may have to modify their die stamps. Small manufacturers may opt to mark their products with permanent ink markers.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The penalty provided in this bill for a manufacturer's failure to mark optical discs is modeled after language contained in a California criminal statute. The proposed Florida language is different in that it does not make manufacturers criminally liable. Thus, the mandatory minimum fine in the bill (usually reserved for criminal statutes) could be modified to provide for a maximum fine alone.

**VIII. Amendments:**

None.