

STORAGE NAME: h0415a.brc

DATE: March 11, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 415

RELATING TO: Optical Discs

SPONSOR(S): Representative Morroni

COMPANION BILL(S): SB 1308(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
 - (2) CRIME & PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The Business Regulation and Consumer Affairs Committee adopted an amendment, without objection, that conforms the bill to the Senate companion and adds language to clarify the sponsor's intent. The amendment makes no substantive change to the bill. The amendment is traveling with the bill.

This bill regulates for the first time in Florida the manufacture of, and trade in, optical discs for commercial purposes and creates penalties for violations of the act. This will reduce the ability of persons to counterfeit, "pirate" or "boot-leg" music, software, movies and the like. The bill requires manufacturers to place identifying marks on optical discs they produce, subject to fines.

The bill will create a first degree misdemeanor punishable for up to a year in jail or by a fine up to \$10,000, or both, for activities related to non-compliant optical discs. The bill also creates a first degree misdemeanor punishable by up to a year in jail or a \$50,000 fine, or both, for tampering with a compliant optical disc.

The bill will have indeterminate fiscal effects on law enforcement and prosecution.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida does not currently regulate the manufacture of, or trade in, optical discs. Optical discs are discs like Compact Discs (CD's) and Digital Video Discs (DVD's) which store data that can be read by a light source such as a laser.

The availability of inexpensive optical disc writing/recording technology allows virtually anyone from a major company to an individual on a home computer or CD recorder to produce and sell optical discs. Therefore, such things as music, software and movies are more susceptible to copyright infringement, also known as "pirating" and "boot-legging."

No unified system exists to permit law enforcement to trace the origin of a "pirated" optical disc. Phillips Electronics has created a system that they have licensed to others for use. However, the system is not practical for the purposes of this legislation.

B. EFFECT OF PROPOSED CHANGES:

The bill would require anyone who manufactures optical discs for commercial purposes to permanently distinguish each optical disc with a mark that identifies the manufacturer and the state of manufacture. The identifying mark must be clearly visible without the aid of magnification and cannot require special reading devices. Permanent marks on optical discs are made by methods such as etching, die stamping, or simply using a permanent ink marker. Manufacturers violating this provision would be subject to a fine of between \$500 and \$5,000 for a first offense, and a fine of between \$5,000 and \$50,000 for second and subsequent offenses.

Commercial purposes would mean the manufacture of at least 10 optical discs in a 180 day period for the purpose of sale in Florida. Manufacturers may include anyone from software producers to "garage bands."

Manufacture would mean the replication of the physical optical disc or production of a master used in any replication process. Manufacture does not include production of discs for internal use, testing or review or the manufacture of blank optical discs.

The bill prohibits anyone to knowingly buy, sell, receive, transfer, or possess for sale or rental an optical disc where the identifying mark is removed, defaced, covered, altered, or destroyed or knowing the optical disc was manufactured in this state without the required mark or with a false mark. Violation of this portion of the bill would be a first degree misdemeanor punishable by up to a year in jail or up to a \$10,000 fine, or both.

The bill prohibits anyone to remove, deface, cover, alter, or destroy the required mark. Violators would be guilty of a first degree misdemeanor punishable by up to a year in jail or a fine up to \$50,000, or both.

The bill takes effect on October 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Manufacturers, whether corporate or individual, will be required to make identifying marks on all optical discs they produce.

State and local law enforcement will enforce and prosecute the provisions of the act, presumably enforcement will be in association with already authorized powers.

(3) any entitlement to a government service or benefit?

Legitimate producers will benefit from the prosecution of offenders.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Manufacturers will bear the costs of including the identifying mark on the optical disc.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

It is currently legal to manufacture, buy, sell, transfer, or possess for rental or sale optical discs which do not bear identifying marks.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 775.082, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate: The bill would potentially increase the number of first degree misdemeanor convictions punishable up to a year in jail.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Manufacturers will bear a cost relative to the size and methods of production. The cost may be as low as the purchase of a permanent ink marker to modification of die stamps.

2. Direct Private Sector Benefits:

The bill will increase penalties for activities related to "pirating." Any reduction in illegal trade will presumably increase consumption of legal goods.

3. Effects on Competition, Private Enterprise and Employment Markets:

Reduction of "pirating" returns consumers to legitimate producers permitting more efficient markets.

D. **FISCAL COMMENTS:**

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

In August 1998, California unanimously passed similar legislation that was the source for the language of this bill. Similar legislation has also been introduced in New York.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, 1999, the Business Regulation and Consumer Affairs Committee adopted an amendment, without objection, that conforms the bill to the Senate companion and adds language to clarify the sponsor's intent. The amendment makes no substantive change to the bill. The amendment is traveling with the bill.

The amendment inserts the words "of the same or different" to conform this bill to the Senate companion and clarify the intent that even small manufacturers (i.e. those individuals working on home computers or cd-recorders) who manufacture more than ten discs, but only in small batches of different discs, should be regulated. Language is inserted to make exceptions to the definition of manufacture plain and understandable to the reader. New language is inserted to conform this bill to the Senate companion. This language further clarifies the types of commonly known optical discs that are reached by this legislation. Recordable compact discs allow individuals to record on optical discs just as easily as one

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would on a cassette deck. Finally, language is inserted to clarify the intent that only manufacturers producing optical discs within Florida must comply with this bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Eric Lloyd

Rebecca R. Everhart