

STORAGE NAME: h0415c.cp

DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
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 AND PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 415 regulates the trade and manufacture of optical discs such as compact discs and digital video discs in the state in order to reduce the trade in "pirated" or "bootleg" music and movies. The bill provides the following:

- Each person who manufactures optical discs for commercial purposes shall permanently mark each disc with an identification mark that identifies the name of the manufacturer and the state in which the disc was manufactured. Failure to comply with this section shall subject the person to a fine of not less than \$500 nor more than \$5,000 for a first offense and a fine of not less than \$5,000 nor more than \$50,000 for a second offense.
- It is unlawful for any person to buy or sell an optical disc knowing that the identification mark required by this section has been removed or that the disc was manufactured without the required mark. A violation of this section is a first degree misdemeanor punishable by up to a year in jail and a \$10,000 fine.
- It is unlawful for any person to knowingly remove or destroy the identifying mark. A violation of this section is a first degree misdemeanor punishable by up to a year in jail and a \$50,000 fine.

It is expected that the sponsor will offer a strike everything amendment to conform the bill to SB 1308.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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

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, optical discs containing software, music and movies are susceptible to illegal reproduction, also known as "pirating" or "boot-legging."

B. EFFECT OF PROPOSED CHANGES:

HB 415 regulates optical discs as follows:

- The bill defines "commercial purposes" as the manufacture of at least 10 optical discs in a 180 day period by storing information on the disc for purposes of sale in this state.
- The bill defines "manufacture" as the replication of the physical optical disc or production of the master used in any optical disc replication process but does not include the manufacture of optical discs for internal use, testing or review or blank optical discs.
- The bill defines "optical disc" 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 and digital video discs.
- The bill requires 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 affixed by molding, diestamping, etching or another permanent method which is clearly visible without the aid of magnification or special devices to read the mark. A manufacturer who fails to comply with this paragraph shall 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 a second or subsequent offense.
- The bill provides that it is unlawful for any person to knowingly remove, deface, cover, alter or destroy the identification mark required by this section. A violation of this paragraph is a first degree misdemeanor punishable by up to a year in jail and a \$10,000 fine.
- The bill provides that it is unlawful for any person to buy, sell, receive, transfer or possess for purposes of sale or rental an optical disc knowing that the identification mark required by this section has been removed, defaced, covered, altered, or destroyed or knowing that the optical disc was manufactured without the required mark or with a false identification mark. A violation of this paragraph is a first degree misdemeanor punishable by up to a year in jail and a \$10,000 fine.

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.

(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:

Creates a new section that is not numbered.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Requires manufacturers of optical discs to mark the discs with identifying information. Prohibits a person from knowingly buying or selling an optical disc where the identifying mark is removed or destroyed. Prohibits a person from removing or destroying the required mark.

Section 2: Provides effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

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

See fiscal comments.

D. FISCAL COMMENTS:

Approximately 75% of all manufacturers of compact discs imprint a code on each disc indicating where the disc is manufactured called SID codes. The amendment would allow the use of SID codes as the identifying mark required under the statute. Thus, the bill would not require most manufacturers to purchase any new equipment.

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:

The section of the bill which requires each manufacturer of optical discs to permanently mark each disc with an identification mark provides that any manufacturer who fails to comply shall be subject to a fine of up to \$5,000 for a first offense and a fine of up to \$50,000 for a second or subsequent offense. However, the section does not provide that failure to comply is a criminal offense and also does not provide that an agency or department would have authority to enforce the section. Thus, it is not clear how this section would be enforced.

It is expected that the sponsor will offer a strike everything amendment to conform the bill to the Senate companion. The strike everything makes the following changes to the bill:

- The amendment adds the term "recordable compact discs" to the definition of "optical disc".
- The amendment provides that "commercial purposes" means the manufacture of at least 10 of the same or different optical discs in a 180 day period.
- The amendment expands the term "identification mark" to include a unique identifier that identifies the place where an optical disc was manufactured. The definition no longer provides that the identification mark must be clearly visible without the aid of a magnification or special device. 75% of manufacturers mark their compact discs with a Source Identification Code (SID).

The amendment would allow the use of SID codes as the identifying mark required under the statute.

- The amendment removes the minimum fines which must be imposed on a person who manufactures discs without an identifying mark and provides that an offender shall be subject to a fine up to \$5,000 for a first offense and up to \$50,000 for a second or subsequent offense.

In August 1998, California unanimously passed similar legislation that was the source for the language of this bill.

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 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

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

Trina Kramer

J. Willis Renuart