

Legislative Analysis



CIVIL REMEDIES FOR VIOLATIONS INVOLVING BOOTLEG MOVIES

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Senate Bills 1386 and 1387 as passed by the Senate
Sponsor: Sen. Alan Sanborn

House Committee: Judiciary
Senate Committee: Judiciary

Complete to 11-8-04

A SUMMARY OF SENATE BILLS 1386 AND 1387 AS PASSED BY THE SENATE

House Bill 5347, which has passed both chambers but has not yet been ordered enrolled, would amend the Michigan Penal Code to make it a crime to use various recording devices to record movies being shown in theaters and other establishments (e.g., libraries or community centers). Senate Bills 1386 would provide civil immunity to a theater owner who detained a person illegally recording a movie, and Senate Bill 1387 would provide civil remedies to a theater owner to recover damages from a person who illegally recorded movies in his or her establishment. The bills are tie-barred to House Bill 5347 and would take effect 90 days after their enactment.

Senate Bill 1386 would add a new section to the Revised Judicature Act (MCL 600.2917a) to provide civil immunity to certain people who detained an individual believed to have committed a motion picture recording violation (proposed by House Bill 5347). Specifically, if the owner or lessee of a theatrical facility in which a motion picture was being shown, or the owner's or lessee'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, agent, or employee would not be liable in a civil action arising out of the measures taken. This immunity 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 would also add a new section to the Revised Judicature Act (MCL 600.2953a) and would specify that a person who committed 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 violator were acting for direct or indirect commercial advantage or financial gain.
- Reasonable attorney fees and costs.

If the violator 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 could recover 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 someone 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.

"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 owner or lessee of the theatrical facility in which the motion picture was being shown.

FISCAL IMPACT:

The bills would have no significant fiscal impact on the judiciary.

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■ 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.