

HOUSE BILL REPORT

SHB 2723

As Passed House:

February 16, 2004

Title: An act relating to prohibiting unauthorized operation of a recording device in a motion picture exhibition facility.

Brief Description: Prohibiting unauthorized recording of motion pictures.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Morris, Carrell, Kirby, Wood, Benson, Darneille, Pearson, O'Brien and Anderson).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/30/04, 2/6/04 [DPS].

Floor Activity:

Passed House: 2/16/04, 97-0.

Brief Summary of Substitute Bill

- Prescribes criminal penalties for operating a recording device in a motion picture exhibition facility without the consent of the facility owner or lessee and the motion picture licensor.
- Releases a motion picture exhibition facility owner or lessee or motion picture licensor from civil liability if he or she detains a person suspected of operating a recording device in the facility.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

Staff: Wendy Chen (Jim Morishima 786-7191).

Background:

Motion picture piracy

Motion picture piracy is the copying, duplication, and distribution of a copyrighted motion picture. A person uses a video camera, digital recorder, or other sophisticated technologies to record a movie as it plays on a theater screen. The person then duplicates the recording onto videotapes or optical discs and distributes them in the U. S. and overseas, often prior to the movie's commercial release. The Motion Picture Association of America (MPAA) estimates that the industry loses \$3 billion each year due to piracy. Piracy is a criminal offense under federal copyright law.

Copyright law

The U. S. Constitution gives Congress the power to promote science and the arts by securing copyrights for authors and inventors. The federal Copyright Act of 1976 protects five exclusive rights of a copyright owner: reproduction, adaption, distribution, performance, and display. The Copyright Act provides an exception to copyright infringement for the fair use of material, such as use for purposes of criticism, comment, news reporting, teaching, scholarship, or research.

Under federal law, liability for copyright infringement is primarily civil, but recent legislation has expanded criminal liability. The No Electronic Theft Act of 1997, criminalizes infringement for personal or commercial use. The Digital Millennium Copyright Act of 1998, criminalizes the manufacture, sale, or distribution of devices used to circumvent anti-piracy measures built into software. A law imposing criminal penalties for using an audiovisual recording device in a movie theater to transmit or copy a movie without the copyright owner's consent is under consideration in the U. S. Senate at this time.

Federal copyright law expressly preempts state and common law. All legal or equitable rights that are equivalent to any of the five exclusive rights and that are within the general scope of copyright are governed exclusively by Title 17 of the U. S. Code. However, a state may regulate an act which does not merely infringe on an exclusive right, but which violates a statute that includes an element which is qualitatively different from any of the exclusive rights.

A number of states prohibit the unauthorized operation of a audiovisual recording device in a motion picture exhibition facility. They include: California, the District of Columbia, New York, Ohio, Pennsylvania, and Wisconsin. No court of appeals has adjudicated a challenge to these statutes on federal preemption grounds.

Washington law prohibits the unauthorized reproduction of a sound recording or live performance. Federal copyright law does not preempt it because of an express exemption from preemption in Title 17.

Qualified immunity

Washington law protects from civil liability a store owner who detains a person in a

reasonable manner for a reasonable period of time for investigatory purposes, if the owner has reasonable grounds to believe the person has shoplifted merchandise.

California, the District of Columbia, New York, Ohio, Pennsylvania, and Wisconsin provide qualified immunity to a movie theater owner or lessee who detains a person suspected of operating an audiovisual recording device in the theater.

Summary of Substitute Bill:

It is a gross misdemeanor to operate the audiovisual recording function of a device in a motion picture exhibition facility without the consent of the facility owner or lessee and the licensor of the motion picture being exhibited. A first violation is a gross misdemeanor. A second or subsequent violation is an unranked class C felony, punishable by no more than one year in jail.

The prohibition does not apply to state and federal government employees or agents performing investigative, protective, law enforcement, or intelligence activities, or to persons demonstrating a device in a retail establishment for sales purposes.

Absent clear and convincing evidence that the detention was manifestly unreasonable, a facility owner or lessee, or a motion picture licensor, or one of their agents, is immune from civil liability if he or she believes in good faith that a person has operated an audiovisual recording device in the facility and detains the person after alerting law enforcement authorities and until they arrive.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Motion picture piracy hurts production people, actors, theater owners, video store owners, and consumers. Piracy costs the motion picture industry an estimated \$3.5 billion a year, which is expected to increase to \$5.4 billion by next year. While federal copyright law regulates piracy, most prosecutors do not pursue individual violators. A state law needs to be on the books. This bill will serve as a tool for theater owners to deter piracy.

Testimony Against: None.

Persons Testifying: T. K. Bentler, Motion Picture Association of America, Inc.

Persons Signed In To Testify But Not Testifying: None.