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## FISCAL IMPACT REPORT

SPONSOR Trujillo DATE TYPED 03/11/05 HB 802/aHCPAC/aHJC

SHORT TITLE Prohibit Movie Recording & Transmission SB \_\_\_\_\_

ANALYST Ford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General (AGO)

Department of Corrections (NMCD)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment strikes House Consumer and Public Affairs Committee amendment #1, which established a subsequent violation of unlawful operation of a recording device as a 4<sup>th</sup> degree felony. The amendment also strikes the provision that provided immunity from civil liability for theatre owners/managers/employees for the detention of persons suspected of unlawfully operating a recording device.

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment provides that a second or subsequent offense of unlawful operation of a recording device is a 4<sup>th</sup> degree felony.

#### Synopsis of Original Bill

House Bill 802 creates the crime of unlawful operation of a recording device, which consists of a person knowingly operating an audiovisual recording device to record a motion picture in a thea-

tre. The crime is a misdemeanor and punishable pursuant to Section 31-19-1 NMSA 1978, which establishes a penalty of up to one year in jail and/or up to a \$1,000 fine.

House Bill 802 also provides immunity for the actions of an owner, manager, or lessee of a motion picture, or his/her agent or employee, who notifies law enforcement in any civil action arising from the detention of a person alleged to be operating a recording device unless the plaintiff can show by clear and convincing evidence that the detention measures were unreasonable or the period of detention was unreasonably long. Finally, the bill makes an exemption for law enforcement personnel operating any audiovisual recording device as part of a lawfully authorized investigation.

### Significant Issues

As the AGO notes, this bill creates strict liability for an individual who records a motion picture in a theatre. Current law requires that a theatre owner show that the offender made the copy and made money off the recording under copyright law or unfair trade practices.

The AGO raises the concern that there may be legitimate purposes for operating an audiovisual recorder in the theatre, such as student working on a school project who does not intent to sell or distribute the movie. However, the bill does specify that the theatre management can authorize an individual to operate a recording device.

### **TECHNICAL ISSUES**

The bill defines “audiovisual recording device” as a device capable of recording or transmitting a motion picture...by means of any technology. However, the definition of unlawful operation of a recording device refers to operating an audiovisual recording device “to record a motion picture...” For consistency and to cover all possible uses of technology, this latter definition should include using an audiovisual recording device “to record *or transmit* a motion picture...”

The AOC notes that it is unclear if the definition of audiovisual recording device includes a device that just records sound.

The AOC also raises a technical concern regarding the definition of unlawful operation of a recording device, noting that the wording suggests the exhibition of the movie is the subject of the manager’s consent, rather than the use of a recording device. This definition could be reworded to clarify this issue.

### **OTHER SUBSTANTIVE ISSUES**

The underground sale of bootlegged movies reduces profit for movie theatres as well as the studios that produce the movies. This bill may help stem the supply of illegal movies. However, the growing threat to studios is more likely from digital copies of movies that are copied from DVDs or illegally downloaded from the Internet. This bill would not appear to address those issues.

**EF/yr:lg:yr**