

# THE MEDIA COALITION INC

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## MEMO IN OPPOSITION TO HOUSE BILL 602

The members of The Media Coalition believe that Illinois House Bill 602 threatens the distribution of First Amendment-protected material in Illinois. The members of The Media Coalition are trade associations and professional organizations that represent most of the publishers, booksellers, librarians, periodical wholesalers and distributors, recording, movie and video game manufacturers, and recording and video retailers in Illinois and the rest of the United States. They neither produce nor sell works that are legally obscene. However they do disseminate a wide variety of material with sexual content, including art and photography books, mainstream movies and music, sex education materials and literary and artistic works.

H.B. 602 would define a business as a "sexually-oriented business" if 10 percent of display space is used for "sexually-oriented material." "Sexually-oriented material" is defined as any material that explicitly depicts subject matter that is intended to be sexually arousing. If a business is deemed a "sexually-oriented business," there may not be any outdoor signs or advertising within a mile of any municipality, Interstate highway, school or place of worship. If an existing "sexually-oriented business" is located within these areas, they are limited to a single sign identifying the store but must post a second sign indicating that access to the premises is limited to adults. The sign advertising the business may only note the name, location, phone and hours of the business.

The government has the power to regulate the "secondary effects" of sexually oriented businesses but the Supreme Court has established limits on this power. The regulation must be designed to further an important or substantial government interest; the governmental interest must be unrelated to the suppression of speech; and the regulation must be narrowly tailored to further the government interest in preventing the unwanted secondary effects. *City of Erie v. Pap's A.M.*, 529 U.S.277 (2000); *Barnes v. Glenn Theatre, Inc.*, 501 U.S. 560 (1991); *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

It is very unlikely that H.B. 602 would meet this test. Given the low threshold to be deemed a "sexually-oriented business" it is very probable that many mainstream book, music and video stores will be at risk for being subject to these regulations. However, there is little reason to believe these restrictions on mainstream stores will prevent unwanted secondary effects this type of bill seeks to reduce. Conversely, H.B. 602 would have a serious chilling effect on many mainstream retailers. The extremely broad definition of "sexually oriented

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, periodical wholesalers and distributors, recording, motion picture and video games producers, and recording and video retailers in the United States.

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Expression

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*Treasurer*  
Gail Markels  
Entertainment Software  
Association

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business" would impede the ability for many stores to make themselves known to their customers and potential customers. Whether it is romance books, hit movies, or pop records, book, record and video stores all carry mainstream material that includes "nudity" as defined in the bill. Many retailers would drastically limit their inventory rather than be classified as a "sexually-oriented business" and have to restrict their ability to advertise their businesses and limit their customers to those at least 21 years old. Also, many would prefer to avoid the negative connotations that go with the label. Store owners fear that they would likely lose customers unwilling to shop at a "sexually oriented business."

The specific restrictions on the content of advertising for businesses that sell and rent First Amendment material is suspect as well. Much of the material that would be used to deem a business an "adult-oriented business" in H.B. 602 is constitutionally protected both for adults and minors as it does not meet the legal test for adult obscenity or material harmful to minors. Generally, the right to create and produce such material includes the right to publicize the material for the purpose of disseminating the material. Therefore, absent a compelling government interest that is narrowly tailored to meet this interest, a restriction is likely unconstitutional. It is unlikely that this legislation will meet this test for allowing these restrictions. Merely re-naming a book, record or video store as an adult business does not allow a state to impose these restrictions.

Finally, the prohibition on anyone under 21 years old entering a "sexually-oriented" business is clearly overbroad. Unless material is legally obscene, it is unconstitutional to bar access by adults to material legal for adults. The government cannot restrict access to such material by creating an arbitrary age restriction.

Please protect the First Amendment rights of all citizens of Illinois and defeat H.B. 602.