

# THE MEDIA COALITION INC

275 SEVENTH AVENUE • 15<sup>TH</sup> FLOOR • NEW YORK, NEW YORK 10001  
PHONE: 212-587-4025 • FAX: 212-587-2436 • WWW.MEDIACOALITION.ORG

DAVID HOROWITZ  
Executive Director

American Booksellers  
Foundation for Free  
Expression

Association of American  
Publishers, Inc.

Comic Book Legal  
Defense Fund

Entertainment Consumers  
Association

Entertainment Merchants  
Association

Entertainment Software  
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America, Inc.

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Inc.

National Association of  
Recording Merchandisers

Recording Industry  
Association of America,  
Inc.

*Chair*  
Chris Finan  
*American Booksellers  
Foundation for Free  
Expression*

*Immediate Past Chair*  
Sean Devlin Bersell  
*Entertainment Merchants  
Association*

*Treasurer*  
Sally Jefferson  
*Entertainment Software  
Association*

*General Counsel*  
Michael A. Bamberger  
*Sonnenschein Nath &  
Rosenthal LLP*

## Memorandum in Opposition to Utah House Bill 353 as Amended

The members of The Media Coalition are concerned that House Bill 353 even as amended still has constitutional implications and may violate the First Amendment rights of retailers and others. The trade associations and other organizations that comprise Media Coalition have many members throughout the country including Utah: book and magazine publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

H.B. 353 would deem as a deceptive trade practice a retailer advertising that they will not sell or rent a product or service with an age-based restriction or recommendation in a way contrary to the restriction or recommendation and then doing so. The bill was amended to exempt businesses that have a documented training program and remedial program in place. "Advertisement" is defined as any representation or statement by a supplier in connection with soliciting business. A lawsuit can be brought by the state or any individual for actual costs or \$2,000 whichever is greater. A court can also provide injunctive relief or mandate corrective advertising.

It is important to remember that films, video games and books are not just any product. They are all speech protected by the First Amendment. Utah could not require they be rated nor mandate that a voluntary rating system be enforced. This bill would serve only to reward trial lawyers while potentially punishing retailers who want to help parents control what media their kids consume.

Despite these changes H.B. 353 could still have a serious chilling effect on retailers and producers of First Amendment protected material. It would apply to the voluntary rating systems of the film and video game industries and might apply to age recommendations used by book publishers. No retailer wants to operate with the cloud of a lawsuit hanging over every transaction. The risk of suit would not be limited to just a district attorney or the Attorney General. This bill would allow any customer with a willing trial lawyer to sue a retailer for a simple mistake by a store that allows a minor to purchase or rent a movie or video game that the minor is legally entitled to buy or rent. The risk of owing up to \$2,000 plus legal fees that can add tens of thousands more dollars to the cost of a suit is an onerous burden for any retailer. Also a small retailer is more vulnerable to a lawsuit because they lack the deep pockets and legal resources of a larger business.

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

Retailers would have difficult choices under this legislation. They could continue to work with film and video game producers to inform parents about the respective industry rating systems, commit to trying to enforce the age recommendations, comply with all of the safe harbor provisions and let the public know their store is a safe place for parents to let their kids shop but risk being sued by an opportunistic tort lawyer if a movie or video game is sold or rented contrary to its rating. However, some retailers may not want to risk a lawsuit or have the time or resources to create a documented training program for employees, monitor each member of the staff to confirm there have been no transactions contrary to advertised ratings, and provide remedial training if there has been such a transaction. Their other choice would be to disavow the rating systems to avoid the time and effort of promulgating a specific training and monitoring program to protect a store from the threat of a lawsuit but risk parents choosing to shop elsewhere for fear that their kid could buy or rent an inappropriate video game or film. Some retailers would just not want to make a choice between the risk of being sued and gaining a bad reputation among its customers and could simply decide to stop selling or renting movies or video games all together.

If you would like to discuss further our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org). Please protect the First Amendment rights of all retailers in Utah and reject this legislation.