

THE MEDIA COALITION INC

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

DAVID HOROWITZ
Executive Director

Memorandum in Opposition to Utah House Bill 353

American Booksellers
Foundation for Free
Expression

The members of The Media Coalition are concerned that House Bill 353 has constitutional implications and may violate the First Amendment rights of retailers and others. The trade associations and other organizations who 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.

Association of American
Publishers, Inc.

Comic Book Legal
Defense Fund

Entertainment Consumers
Association

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. "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.

Entertainment Merchants
Association

Entertainment Software
Association

Freedom to Read
Foundation

Independent Book
Publishers Association

This bill could 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 clerk even if their child used a fake I.D. to buy an age inappropriate movie or video game. The risk of owing \$2,000 plus legal fees that can add tens of thousands more to the cost is an onerous burden for almost any retailer.

Magazine Publishers of
America, Inc.

Motion Picture
Association of America,
Inc.

National Association of
Recording Merchandisers

Recording Industry
Association of America,
Inc.

Chair

Chris Finan

*American Booksellers
Foundation for Free
Expression*

Retailers would then have two choices. 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 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 single movie or video game is sold or rented contrary to its rating. The other choice is to disavow the rating systems to protect a store from the threat of a lawsuit but risk parents choosing to shop elsewhere for fear that their kid could buy an inappropriate video game or film. Some retailers would just not want to make a choice between the risk of being sued or gaining a bad reputation among its customers and could simply decide to stop selling or renting movies or video games all together.

Immediate Past Chair
Sean Devlin Bersell
*Entertainment Merchants
Association*

Treasurer

Sally Jefferson
*Entertainment Software
Association*

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

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.

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 that a voluntary rating system be enforced. This bill would serve only to reward opportunistic lawyers while potentially punishing retailers who want to help parents control what media their kids consume.

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. Please protect the First Amendment rights of all retailers in Utah and reject this legislation.