



NATIONAL ASSOCIATION
OF THEATRE OWNERS

March 18, 2009

The Honorable Jon M. Huntsman, Jr.
Governor
State Capitol Complex
PO Box 142220
Salt Lake City, Utah 84114-2220

Dear Governor Huntsman,

The National Association of Theatre Owners (NATO), a trade association that represents the largest cinema circuits in the country and hundreds of independent theater owners, respectfully requests that you veto UT HB 353.

H.B. 353 would amend the Truth in Advertising statute to declare that a deceptive trade practice occurs if a business publicly states that it will not sell a product labeled with an age restriction or advisory to anyone under the age specified and then in fact makes a sale to someone under that age.

H.B. 353 would have a severe adverse impact on the voluntary motion picture ratings enforcement programs of exhibitors.

Movie theaters have committed not to sell tickets to motion pictures rated “R – Restricted” to persons under age 17 and to motion pictures rated “NC-17” to persons under age 18. They voluntarily forgo these sales not to curry the favor of consumers (indeed, the most common complaint about the rating system we receive is from parents who are annoyed that a cinema would not let their children into an R-rated movie), but because they believe it is the right thing to do and because it is a private partnership with America’s parents that works.

H.B. 353 destroys that private partnership and substitutes the specter of government-imposed liability for mistakes or intermittent errors by theater employees—all based upon exhibitors *promoting* ratings enforcement. H.B. 353 effectively takes what everyone agrees is good and constructive conduct by business and makes it the basis for vexatious lawsuits and expensive liability. What rational Utah exhibitor would fail to hesitate before ever again promoting ratings enforcement and inviting rounds of lawsuits? While we understand and respect the impulse of Utah lawmakers to promote age-appropriate restrictions on access to entertainment products, H.B. 353 would perversely have the opposite effect—encouraging silence on ratings enforcement.

Indeed, even the Senate sponsor of the bill acknowledged as much during floor debate. Sen. Dayton stated that a retailer wishing to avoid potential liability under the bill could simply disclaim any intention to enforce ratings in their establishment.

Ironically, H.B. 353 comes at a time when exhibitors have made significant strides in enforcing motion picture ratings. The most authoritative surveys of entertainment ratings enforcement are conducted by the Federal Trade Commission (FTC). Since 2000, the FTC has periodically conducted “secret shopper” surveys to determine the compliance of motion picture theaters and DVD and video game retailers with their voluntary ratings enforcement policies. In its 2008 report, the FTC found that underage consumers it sent to movie theaters to purchase tickets to R-rated movies were rejected in 65% of the instances, up from 52% in 2001. For more information, see www.ftc.gov/opa/2008/05/secretshop.shtm. We are advised that the FTC intends to conduct another secret shopper survey and issue a report to Congress later this year.

The FTC is the government agency with by far the most experience and intimacy with entertainment marketing and ratings enforcement. Significantly, the FTC has consistently applauded the private ratings systems—while encouraging continuing improvement—and rejected, on First Amendment grounds, any role for government apart from monitoring and dialogue.

While provisions added to the bill on the House floor would provide some relief from the threat of litigation, no retailer should face liability for falling short of perfection in carrying out its voluntary commitment to assist parents by enforcing the video game and motion picture ratings.

We understand that when this bill was discussed on the House floor, it was suggested that exhibitors would not, in fact, back away from public statements about ratings enforcement. We ask that you put yourself in the shoes of a small business exhibitor, trying to make ends meet, calculating costs and potential liability exposure. You can promote the ratings system and pledge to enforce age restrictions and invite all manner of litigation and liability—even frivolous lawsuits cost a lot of money—or you can be silent and ensure that ratings enforcement doesn’t end up costing you your business. We ask you simply: what would you do?

If you sign this well-intended but misguided bill, it will be our serious counsel to Utah cinema operators to cease promoting ratings enforcement or discussing movie ratings in any way. You would have therefore ushered a step into the darkness for Utah’s parents. Your legacy would be Utah parents’ loss.

We ask that you take the courageous and honest step of exercising your veto power to avoid the gravest distortion and suppression of the movie ratings system in the country.

Sincerely,

G. Kendrick Macdowell
Vice President, General Counsel &
Director of Government Affairs