



**Talking Points ...**

## **Ratings: The Utah “Truth in Advertising” Ambush**

- Following a successful grassroots campaign by NATO of Utah, the Entertainment Merchants Association, the Entertainment Software Association, and MPAA, Utah Gov. Jon M. Huntsman, Jr. vetoed a bill that would have severely damaged the voluntary motion picture ratings enforcement programs of exhibitors in the state.
- Utah H.B. 353, overwhelmingly approved by Utah lawmakers, would have amended the state’s 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.
- The main provision of the measure would have subjected Utah’s entertainment retailers and movie theaters to fines and costly lawsuits for any incidental violation of their voluntary ratings enforcement. 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.
- H.B. 353 would have taken what everyone agrees is good and constructive conduct by entertainment retailers—promoting the ratings system—and made it the basis for vexatious lawsuits and expensive liability. What rational exhibitor in such a regime would fail to hesitate before ever again promoting ratings enforcement and inviting rounds of lawsuits? While the exhibition industry understands the impulse to promote age-appropriate restrictions on access to entertainment products, bills like H.B. 353 would perversely have the opposite effect—encouraging silence on ratings enforcement.
- Such unconstitutional legislation would have the unintended consequence of shuttering the primary source of information for parents about age-appropriate entertainment. This too-clever back-door approach to government ratings enforcement would incentivize movie theater operators to back out of ratings enforcement, and would therefore threaten to unravel our four decades of successful voluntary ratings enforcement.
- In rejecting HB353, Gov. Huntsman wrote, “While protecting children from inappropriate materials is a laudable goal, the language of this bill is so broad that it likely will be struck down by the courts as an unconstitutional violation of the Dormant Commerce Clause and/or the First Amendment... The industries most affected by this new requirement indicated that rather than risk being held liable under this bill, they would likely choose to no longer issue age appropriate labels on goods and services. Therefore, the unintended consequence of the bill would be that parents and children would have no labels to guide them in determining the age appropriateness of the goods or service, thereby increasing children’s potential exposure to something they or their parents would have otherwise determined was inappropriate under the voluntary labeling system now being recognized and embraced by a significant majority of vendors.”