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Testimony re: HB 2054
House Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Motion Picture Association of America
February 14, 2013

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Motion Picture Association of America (MPAA), the trade association representing the nation's leading producers and distributors of motion pictures on film, home video, the Internet, satellite, cable, subscription and over-the-air television broadcast. MPAA is a trade association representing the leading producers and distributors of motion pictures in the United States. All MPAA member companies produce and distribute motion pictures for theatrical exhibition and for subsequent release on DVD, videocassette, pay, cable, satellite, Internet and broadcast television. MPAA also administers the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R, or NC-17 ratings to motion pictures. CARA was established in 1968 to provide parents with information to help them determine which motion pictures their children should see.

The MPAA is opposed to HB 2054. Although the MPAA is neutral with regards to the main elements of HB 2054, we strongly oppose the use of the MPAA ratings system within the bill itself. Our concerns relate to the provisions of HB 2054 which incorporate the voluntary Motion Picture Association of America rating system into law. Incorporating the rating system into law compromises its integrity and has the potential to jeopardize participation by film makers. Moreover, courts have determined that incorporation of the voluntary rating system violates the U.S. Constitution. Part of the issue relates to the legal doctrine that it is an unconstitutional delegation of legislative authority for a legislative body to delegate their powers to a private association.

New Section 3(e) reads: "... For purposes of sections 1 through 11, and amendments thereto, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the motion picture association of America.

I have attached a copy of the MPAA memorandum regarding the issues raised with HB 2054 attempting to use the Motion Picture Association of America ratings. For these reasons, MPAA respectfully urges the committee to either delete the reference to the motion picture association of America and the reference to the ratings system and such ratings, in New Section 3(e), or to recommend HB 2054 adversely.

Thank you for considering my views and I will yield for questions.

MOTION PICTURE ASSOCIATION
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MEMORANDUM IN OPPOSITION TO KANSAS HOUSE BILL 2054

On behalf of the Motion Picture Association of America, Inc. (MPAA), we are writing to respectfully submit our opposition to House Bill 2054, a bill to establish the community defense act. While we have no objection to legislation that regulates sexually oriented businesses, we must oppose the HB 2054 as it incorporates the voluntary Motion Picture rating system in law. We would urge Section 3(e) of the legislation be deleted, eliminating the reference to rating system.

MPAA supports the right of parents to know and participate in what their children view. We believe incorporating the rating system into law compromises its integrity and has the potential to jeopardize participation by filmmakers. Moreover, courts have determined that incorporation of the voluntary rating system violates the U.S. Constitution.

MPAA* is a trade association representing the leading producers and distributors of motion pictures in the United States. All MPAA member companies produce and distribute motion pictures for theatrical exhibition and for subsequent release on DVD, videocassette, pay, cable, satellite, Internet and broadcast television. MPAA also administers the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R, or NC-17 ratings to motion pictures. CARA was established in 1968 to provide parents with information to help them determine appropriate motion pictures for children's viewing.

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* The Motion Picture Association of America, Inc. includes: The Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal Studios LLC; and Warner Bros. Entertainment Inc.

INCORPORATION OF VOLUNTARY MOVIE RATINGS SYSTEM INTO LAW THREATENS EFFECTIVENESS OF THE SYSTEM

The MPAA and its member companies are concerned that if this proposed statute is enacted, it would seriously erode the effectiveness of the voluntary MPAA-administered Motion Picture Rating System. It is important to recognize that the MPAA Rating System is voluntary and strictly advisory with no force of local, state or federal law. We strongly encourage voluntary enforcement of the MPAA-administered Motion Picture Rating System by theaters, retailers and others. However, CARA would be unable to fulfill its mandate of providing parents with information if it were forced to become part of a state's statutory framework. Tied to government regulation, the rating system could lose its independent ability to respond to changes in social attitudes and judgments in making recommendations about the suitability of motion pictures for particular age groups. Once the rating system becomes subject to state regulation, producers may simply stop submitting their films for rating in order to get around regulation. The movie rating system has stood the test of time and is better left without the force of law imposed by any state.

UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY

House Bill 2054 raises some constitutional concerns because it specifically identifies the MPAA rating system. The incorporation into law of the rating classifications is unconstitutional. Enforcement of the rating system cannot be tied to any governmental body, and identifying the system in the legislation impermissibly puts the government imprimatur on those ratings. Courts throughout the country have invalidated the incorporation of MPAA ratings in a variety of statutory contexts. See Swope v. Lubbers, 560 F.Supp. 1328 (W.D. Mich, S.D. 1983) (use of MPAA ratings was improper as a criteria for determination of constitutional protection); Drive-In Theater v. Huskey, 305 F.Supp. 1232 (W.C.N.C. 1969) aff'd 435 F.2d 228 (4th Cir. 1970) (sheriff enjoined from prosecuting exhibitors for obscenity based on "R" or "X" rating).

Furthermore, the delegation of legislative authority to any entity such as the MPAA to legally determine which motion pictures may be viewed by segments of the population is a violation of the Due Process clause of the U.S. Constitution. Due Process is violated when a government regulation or ordinance delegates the regulations for the operation and enforcement of a statute to a body or process that is not subject to narrowly and reasonably drawn definitive standards. The MPAA rating system is a voluntary system not

governed by the necessary definitive standards. See Rosen v. Budco, Inc., et al., 10 Phila. 112 (1983); Engdahl v. Kenosha, 317 F.Supp. 1133 (E.D. Wisc. 1970) (criminal statute that prohibited minors from viewing "R" and "X" rated films found to be unconstitutional prior restraint); Motion Picture Association v. Specter, 315 F.Supp. 824 (E.D. Pa 1970) (statute that penalized exhibitors who showed films and previews that were "not suitable" for children as determined by MPAA ratings found unconstitutional for vagueness). Similarly, the rating system cannot be used as a standard by which to determine whether an establishment meets the definition of adult motion picture theater or other adult entertainment establishment.

INCORPORATION OF MOVIE RATINGS SYSTEM CONTRAVENES THE FIRST AMENDMENT

House Bill 2054 defines an adult motion picture theater by excluding those business establishments that show, sell or rent materials rated NC-17 or R by the Motion Picture Association of America. Incorporation of the MPAA Rating System by governmental entities also has serious constitutional problems because it relies on the ratings as a standard to permit or prohibit access to films on videocassette or in the theatre that have received that self-applied classification. Motion pictures are a form of expression which are protected by the First Amendment to the U.S. Constitution, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Eronoznik v. City of Jacksonville, 422 U.S. 205 (1975); Jenkins v. Georgia, 417 U.S. 153 (1974). The exhibition of a motion picture to an adult may be proscribed only if the motion picture is legally found obscene, and in regard to minors, access may be prohibited only if the motion picture is found legally "harmful to minors."

It is important to keep in mind that the ratings are strictly advisories, and are not determinations that particular motion pictures are obscene or harmful to minors based on aforementioned U.S. Supreme Court decisions.

CONCLUSION

For the reasons specified, we respectfully request that Section 3 (e) be deleted from House Bill 2054, or alternatively that the legislature defeat this bill.

February, 2013