

## GENERAL SESSION

February 24, 2016

**Program Topics:** Deregulating Food Producers,  
Age Limit for Tobacco Sales,  
Civil Suits for Sex Abuse - Statute of Limitations

**Presented by:** Natural Resources Committee  
Kimber Gabryszak & Kendra Seely

### Speakers:

<b>Rep. Marc Roberts</b>	(R) Utah House District 67, Utah County
<b>Sterling Brown,</b>	Lobbyist, Utah Farm Bureau
<b>Sen. Brian Shiozawa</b>	(R) Utah Senate District 8, Salt Lake County
<b>Dave M. Davis,</b>	Lobbyist, Utah Retail Merchants Association
<b>Rep. Ken Ivory</b>	(R) Utah House District 67, Salt Lake County
<b>Fred Cox</b>	(R) Utah House District 30, Salt Lake County



Rep. Roberts

Rep. Roberts told the group that he is sponsoring [HB 144 Food Freedom Act](#) in response to a growing demand from consumers for food that is natural, raw, and has had minimal handling. His bill would exempt food producers from all regulation if they sell directly to an end consumer. Foods such as

raw milk, sauerkraut, and bread could be sold freely to “informed” consumers: those who have been told that the food is offered under the deregulations outlined in the bill.

The bill does not apply to meat with the exception of “poultry and poultry products consistent with this chapter.” Roberts

mentioned that there are only 3 licensed poultry processing plants in the state, and many small producers find that the cost of transport is prohibitive for them.

The bill does not allow sales to commercial entities – caterers, food trucks, or restaurants.

An audience member asked Rep. Roberts if anyone who owned dairy cows could sell raw milk under these terms. Roberts replied that they could, and he lauded the important life values that could be taught to children through farm labor.

He noted that food that is offered freely at public events or in homes is not subject to any regulation and such food seems generally safe. The dichotomy

between the way free food is regulated vs. sold food confuses him.

Another question fielded by Roberts concerned consumer education about the specific dangers of unregulated food. The Representative rejected that worry as unrealistic because consumers who seek out such food are already well-informed.

He also said that nothing in the bill prevents the Department of Health from conducting an investigation of a producer whose customers have become ill.



Sterling Brown

In response, Sterling Brown noted that the United States has a safe and affordable food supply. In Utah today, fresh, whole produce and eggs can be sold without restriction, as can be seen at any farmers' market. He urged caution in deregulating poultry and dairy products. Outbreaks of

bacteria in raw milk, for example, can be deadly, and they cause consumer confidence to plummet for weeks after the illnesses or deaths have been in the news.

Brown said that he would be amenable to discussing modifications to existing regulations, but he did not support the across-the-board exemptions of HB144.



Sen. Shiozawa

As a practicing physician, Sen. Shiozawa often sees the serious health effects of tobacco. He is the floor sponsor of [HB 157 Age Limit for Tobacco and Related Products](#) which raises the age for

purchasing tobacco from 19 to 21 years of age.

He noted that "sin taxes" can be an economic benefit for a state, so reducing teen smoking might reduce state revenues. But, raising the smoking age is a societal measure that is realistic and beneficial. His own philosophy in considering regulation is give the principle of individual freedom most weight, followed by considering the benefits to families and society. HB 157 keeps the freedom to smoke, and it has the positive effect of helping teens avoid early addiction.

Anticipating counter arguments, he said that the military would like to limit smoking because it diminishes the effectiveness of personnel. Combat troops are expected to maintain a high level of physical capability, but that is undercut by smoking.

The Senator also spoke about a Senate resolution calling on Congress to make marijuana a Schedule 2 substance, about Sen. Madsen's marijuana bill SB 73, and his fervent support for Medicaid expansion.

Speaking opposition to HB 157, Dave Davis introduced himself as a lobbyist representing retail merchants and grocery store and convenience store owners. He started by pointing out that Utah is one of only five states that sets the minimum age for purchasing tobacco at an age higher than 18. For Utah, an important consideration was that the higher age "pulled the issue of tobacco out of the schools."



Dave Davis

In discussing his objections to an even higher age, he noted that 19 year olds are trusted to serve in the military and to

vote — but under this bill they could not make a personal, informed decision about a (bad) product. He asked if it was the proper role of government to disallow the choice to smoke.

An implementation aspect of HB157 troubled Mr. Davis. Those habitual smokers who are 20 years old now would be unable to purchase tobacco for a year, leaving them trapped in a habit without the ability to purchase a legal product. The problem could affect people coming to Utah for employment and military service. He characterized these 20 year olds as “a whole new class of criminal.”

Grocery businesses work very hard to prevent tobacco products being sold to underage consumers, but Davis notes that young people tend to get these products from friends and family. He does not believe that raising the age for purchase will bring about the desired consequence.

Davis’ last point is that tobacco is unsafe at any age. Studies about alcohol use before the age of 21 offer substantial evidence that it damages the developing brain. Tobacco use should be regulated on a different foundational basis.

In Davis' opinion, instead of passing yet another law, government should focus on preventing tobacco products from getting into the hands of youth.



Rep. Ivory



Rep. Cox

### [HB 279 Statute of Limitations Reform Amendments](#)

This bill extends the amount of time available for filing civil suits against those who perpetrate or actively facilitate sex abuse. Rep. Ivory said it is necessary because people who are abused as children generally need decades to come to terms with their experience and to gain the psychological strength to bring a lawsuit. This bill would give them 35 years after their 18<sup>th</sup> birthday to bring suit.

Rep. Ivory asserted that 25% of girls are sexually assaulted before age 18 as are 16% of boys. Last year the legislature removed any time limit for bringing civil suit against perpetrators of sexual abuse. However, the bill only applied to victims who were 22 years old, or younger, on March 23, 2015. This did not help older victims, and Rep. Ivory began to hear that there were a great many of them.

The stories of these older survivors were heart-wrenching, and Rep. Ivory felt they needed recourse to civil suits. The statute of limitations for such suits was set in 1992 in Utah and modified in 1996, but it only gave a victim 4 years after reaching age 18 to bring suit. He said that “on average”, victims do not come forward until age 43. HB 279 is meant to correct the past mistake of a poor public policy.

The bill does not allow suits against negligent institutions such a churches or schools.

Rep. Ivory mentioned that Utah has no statute of limitations for bringing criminal suits against sexual abusers, and that it only applies going forward from the time of the legislation. It cannot be changed to apply retroactively, a point that is relevant to the next speaker's objection.

A questioner referred to sexual abuse education in public schools. A bill enabling this passed a few years ago, and Ivory believes it is in the implementation phase. It is not related to a current bill for comprehensive sex education.

In standing committee, two people voted against the bill. Rep. Cox explained their technical objection to HB279. It is based on the US Constitution's Article I, two clauses of which prohibit *ex post facto* laws. In general, the provision is there to make sure that people cannot be punished for something that was not a crime when the action took place and to ensure that a contract cannot be voided by later changes in the law. The restriction on criminal laws applies both to the federal government and to individual states.

Background information on this issue can be found in many law commentaries. In 2006, the Supreme Court voided part of California law that extended the statute of limitations for sex abuse crimes retroactively. The court ruled that "a law enacted after expiration of a previously applicable limitations period violates the

Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution." Although HB 279 is different in that it applies only to civil cases, Rep. Cox would like to have assurances that it is consistent with the Constitution. He said that Rep. Ivory has an uphill battle to convince him that this is the case.

In developing his opinion on this, Rep. Cox went back to discussions in 1787 among the Founding Fathers about retroactive laws and their application to civil suits. He is not convinced that Supreme Court decisions on past cases should sway those who remain true to the intent of the Constitution. Legislators are not required to adhere to case law, their only oath is to defend the Constitution.

Another problem with the bill is that its provisions overlap with the 1996 legislation that allowed suits against negligent parties only until 4 years after the victim attains 18 years of age. HB 279 also applies to negligent parties, making it unclear which provision would apply.

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Note: Last week's bulletin spoke of choosing between "pain relief and criminality". That should have been "pain and criminality".

Note: The WSLC members voted to adopt a resolution opposing HB 157. They would like to see the age for tobacco purchase remain at 19.

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