



# Senate

General Assembly

**File No. 136**

February Session, 2022

Substitute Senate Bill No. 131

*Senate, March 28, 2022*

The Committee on Planning and Development reported through SEN. CASSANO of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING ELECTRONIC BOOK AND DIGITAL AUDIOBOOK LICENSING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2022*) (a) As used in this section,  
2 (1) "digital audiobook" means a sound recording of a reading of any  
3 literary production that has been converted into or published in a digital  
4 audio file that may be listened to on a computer or portable electronic  
5 device, (2) "electronic book" means a text document converted into or  
6 published in a digital format that may be read on a computer or portable  
7 electronic device, (3) "loan" means to create and transmit to a library  
8 user a copy of an electronic book or digital audiobook and to delete such  
9 copy upon the expiration the loan period, (4) "portable electronic device"  
10 means any self-contained electronic device for personal use for  
11 communicating, reading, viewing, listening, playing video games, or  
12 computing, including a mobile telephone, tablet computer, electronic  
13 book reader, and other similar devices, (5) "publisher" means any person  
14 in the business of the manufacture, promulgation or sale of books,

15 journals or other literary productions, including those in digital form,  
16 consisting of text, imagery or both, and digital audiobooks, and (6)  
17 "reasonable terms" means purchase or licensing specifications that  
18 consider a publisher's business model as well as a library's need for the  
19 efficient use of funds in providing library services.

20 (b) Any publisher who offers any contract or product license for the  
21 acquisition or use of any electronic book or digital audiobook to the  
22 public shall, upon the request of any library in this state, offer such  
23 contract or product license to the requesting library on reasonable terms  
24 that would permit the requesting library to provide its library users with  
25 access to such electronic book or digital audiobook.

26 (c) Any contract or license agreement between any publisher and any  
27 library entered into pursuant to subsection (b) of this section may  
28 require (1) a limitation on the number of users a library may allow  
29 simultaneous access to an electronic book or digital audiobook, or (2) a  
30 library's use of technological protection measures that prevent a user  
31 from (A) maintaining access to an electronic book or digital audiobook  
32 beyond the access period specified in the license, and (B) providing  
33 other users with access to an electronic book or digital audiobook.

34 (d) No contract or license agreement between any publisher and any  
35 library entered into pursuant to subsection (b) of this section shall (1)  
36 prohibit any library from loaning electronic books or digital  
37 audiobooks, (2) prohibit any library from loaning electronic books or  
38 digital audiobooks through any interlibrary loan system, (3) restrict the  
39 number of times any library may loan any electronic book or digital  
40 audiobook, (4) restrict any library's loan periods for electronic books or  
41 digital audiobooks, (5) limit the number of electronic book or digital  
42 audiobook licenses any library may purchase on the same date such  
43 electronic book or digital audiobook is made available for purchase by  
44 the public, (6) prohibit any library from making nonpublic preservation  
45 copies of any electronic book or digital audiobook, or (7) restrict any  
46 library from disclosing the terms of any license agreement to any other  
47 library in the state.

48 (e) Any publisher that violates the provisions of this section shall  
 49 have committed an unfair trade practice under subsection (a) of section  
 50 42-110b of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	New section

**Statement of Legislative Commissioners:**

In Subsec. (d)(5), "digital audiobook" was added after "electronic book" for accuracy.

**PD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Consumer Protection, Dept.	GF - Cost	133,631	133,631
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	54,161	54,161
Library, CT State;	GF - Potential Savings	See Below	See Below
Higher Education Constituent Units	Various - Potential Savings	See Below	See Below

Note: GF=General Fund; Various=Various

**Municipal Impact:**

Municipalities	Effect	FY 23 \$	FY 24 \$
Various Municipalities	Potential Savings	See Below	See Below

**Explanation**

The bill, which establishes parameters for electronic book (e-book) library contracts and enforcement of those parameters, is anticipated to result in an annual cost to the state due to the enforcement provisions and a potential savings to public entities that operate libraries.

The bill makes it an unfair or deceptive trade practice for a publisher to offer unreasonable terms for e-book licenses, resulting in a cost to the Department of Consumer Protection (DCP) and the Office of the State Comptroller of \$187,792 in FY 23 and 24 (cost includes salary and fringe

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

benefits). The bill's provisions are anticipated to generate numerous new complaints and violations resulting in DCP needing to hire one special investigator and one paralegal. These positions will manage and review the complaints, investigate the cases, determine what purchasing or licensing specifications are unreasonable, conduct settlement negotiation and case preparation.

To the extent the bill produces e-book lending terms that are more favorable to libraries, the bill may result in a savings to public entities statewide that provide e-books, including the Connecticut State Library (CSL), the constituent units, various other state agencies, municipalities, and local and regional boards of education. The extent of annualized savings would depend upon actual contract terms.

Currently, there are various e-book licensing models implemented across state agencies and municipalities. The CSL spends approximately \$125,000 annually on e-book content and municipalities aggregately spend approximately \$150,000 per year on e-book content.

The higher education constituent units collectively have over 30 contracts involving e-books. Some of the contracts include terms that the bill prohibits, such as restrictions on interlibrary loaning. The bill's removal of those terms potentially results in savings associated with less costly e-book acquisition, as well as expanded interlibrary loan access. The extent of the potential savings depends on contract terms, the cost differential between e-books and traditional books, and the extent to which interlibrary loan access reduces a library's need to independently purchase content.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and contract terms.

**OLR Bill Analysis****sSB 131*****AN ACT CONCERNING ELECTRONIC BOOK AND DIGITAL AUDIOBOOK LICENSING.*****SUMMARY**

This bill requires publishers who offer electronic books (ebooks) or digital audiobooks to the public to give any Connecticut library, if requested, a license agreement or contract on reasonable terms. Under the bill, “reasonable terms” are those that allow the library to give its users access to the ebook or digital audio book and consider the publisher’s business model and the library’s efficient use of its funds.

The bill outlines prohibited and allowed provisions in the agreements or contracts, particularly with respect to lending terms. (While the federal Copyright Act’s “first sale” rule allows libraries to lend copyrighted material that they own, like books, to their users freely, there is no such rule for licensed formats like ebooks (see BACKGROUND).)

A violation of the bill’s reasonable terms requirement is violation of the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND).

Under the bill, an “ebook” is a text document converted into, or published in, a digital format that can be read on a computer or portable electronic device (e.g., cell phone or electronic book reader). A “digital audiobook” is a sound recording of a reading of a literary production, converted into, or published in, a digital audio file that can be listened to on a computer or portable electronic device. “Publishers” are people in the business of manufacturing, promulgating, or selling books, journals, or other literary productions (including digital formats and digital audiobooks) with text, pictures, or both.

EFFECTIVE DATE: October 1, 2022

### **PERMITTED TERMS**

Under the bill, a contract or license agreement between a publisher and requesting library may require that the library:

1. limit the number of users that may simultaneously access an ebook or digital audiobook or
2. use technological protection measures that prevent users from (A) accessing an ebook or digital audiobook after the access period ends, as specified in the license, and (B) giving other users access to an ebook or digital audiobook.

### **PROHIBITED TERMS**

Under the bill, no contract or license agreement between a publisher and requesting library may:

1. prohibit the library from loaning ebooks or digital audiobooks, including through any interlibrary loan system;
2. restrict the number of times the library can loan an ebook or digital audiobook or the loan period;
3. limit the number of ebook or digital audiobook licenses the library can buy on the date that the ebook or digital audiobook is made available for public purchase;
4. prohibit the library from making nonpublic preservation copies of an ebook or digital audiobook; or
5. restrict the library from disclosing to another library in the state the terms of a license agreement.

Under the bill, “loan” means to create and transmit to a library user a copy of an ebook or digital audiobook, which is deleted when the loan period expires.

### **BACKGROUND**

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**CUTPA**

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order (CGS § 42-110a et seq.).

**Federal Copyright Act's "First Sale" Rule (17 U.S.C. § 109)**

Under the "first sale" rule, publishers must generally allow a library to (1) purchase print books and phonorecords (e.g., CDs) in the same way as members of the public and (2) lend the materials to its users without the publisher's consent or paying for the privilege. Ebooks and digital audiobooks, however, are generally licensed to libraries, and so are not covered by the rule.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/11/2022)