
OLR Bill Analysis

sHB 6800

AN ACT CONCERNING ELECTRONIC BOOK AND DIGITAL AUDIOBOOK LICENSING.

SUMMARY

This bill prohibits contracts or license agreements between libraries and publishers of electronic literary materials (i.e., electronic books (ebooks) and audiobooks) that stop, limit, or restrict the library from performing customary operational or lending functions. It applies to these agreements entered into or renewed on and after October 1, 2023.

The bill outlines specifically prohibited and allowed terms, particularly with respect to lending these materials. Under the bill, a publisher's violation of these provisions is a Connecticut Unfair Trades Practices Act (CUTPA) violation and a contract or agreement containing the prohibited terms is deemed unconscionable under the Uniform Commercial Code (UCC, see BACKGROUND).

"Electronic literary material" ("material") means ebooks and digital audiobooks that can be read or listened to on a computer or portable electronic device (e.g., tablet or cell phone). "Publishers" are (1) people in the business of manufacturing, promulgating, licensing, or selling books, journals, magazines, newspapers, or other literary productions (including digital formats and digital audiobooks) or (2) aggregators in the business of licensing access to material collections, including works from multiple publishers, and entering into contracts with libraries to sell or license these materials. The covered libraries are public libraries and public elementary or secondary school libraries; academic, research, and public archive libraries; tribal libraries; and the Connecticut State Library.

EFFECTIVE DATE: October 1, 2023

CONTRACT OR LICENSE AGREEMENT TERMS

Prohibited Terms

The bill prohibits contracts and license agreements between publishers and libraries from stopping, limiting, or restricting a library from performing customary operational or lending functions. It specifically prohibits provisions that:

1. prohibit a library from lending material, including through an interlibrary loan;
2. restrict the number of times a library may loan material over the course of the license agreement if the agreement also restricts the library's loan period;
3. limit the number of licenses a library can purchase on the day the material is made available for public purchase;
4. prohibit a library from making nonpublic preservation copies;
5. restrict a library from disclosing a license agreement's terms to another Connecticut library;
6. restrict the length of the license agreement, unless the publisher has also offered an agreement (a) based on a pay-per-use model, or (b) allowing perpetual public use of the material upon commercially reasonable terms, considering the library's mission; or
7. require the library to disclose patrons' protected, confidential information (see CGS § 11-25).

Permissible Terms

The bill also specifies terms that do not violate the bill's requirements. It allows contracts or agreements to include terms that require:

1. a limit on the number of simultaneous borrowers; and
2. the library to make reasonable use of technological protection measures that prevent a borrower from (a) maintaining access to

material beyond the loan period or (b) sharing access to the material with other borrowers.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining 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.

Uniform Commercial Code (UCC)

Under the UCC's doctrine of unconscionability, the basic test is whether, in light of the general commercial background and the commercial needs of the particular trade or case, the terms involved are so one-sided that they suggest an unfair bargaining process. If a court finds that a contract, or any part of a contract, was unconscionable when it was made, the court can (1) refuse to enforce the contract; (2) refuse to enforce the problematic terms; or (3) limit the terms to avoid an unconscionable result (U.C.C. § 2-302, codified at CGS § 42a-2-302).

Related Bill

sHB 6829, reported favorably by the Governmental Administration and Elections Committee, contains similar provisions on contracts or agreements that prevent a library from performing customary operational and lending functions and, among other things, (1) sets a civil penalty of \$500 per violation, up to a total of \$4,500, and (2) allows municipalities to enact an ordinance with equivalent civil penalties for violations concerning public libraries or school libraries.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 21 Nay 0 (03/17/2023)