
OLR Bill Analysis

sHB 6829

AN ACT MAKING CERTAIN TERMS IN ELECTRONIC BOOK AND DIGITAL AUDIOBOOK LICENSE AGREEMENTS OR CONTRACTS UNENFORCEABLE.

SUMMARY

This bill prohibits contracts or license agreements between libraries and publishers of electronic literary materials (i.e., electronic books (ebooks) and audiobooks) from being interpreted as stopping, limiting, or restricting 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. Any prohibited terms are unenforceable under the bill. It establishes state civil penalties (\$500 per violation, up to a total of \$4,500) and authorizes municipalities to adopt ordinances establishing penalties for certain violations up to those amounts. Under the bill, these penalties are appealable to the Superior Court.

“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.

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 being construed to stop, limit, or restrict a library from performing customary operational or lending functions. It specifically prohibits, and makes unenforceable, 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 the terms of a contract or license agreement to another Connecticut library;
6. restrict the length of the contract or license agreement, unless the library has the option of (a) a pay-per-use model, or (b) allowing perpetual public use of the material on 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 are not violative of the bill's requirements. So, contracts or agreements may 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.

“Technological protection measures” are technologies that enhance the security of a library’s loans or circulation of materials.

PENALTIES AND APPEALS

Under the bill, no one may enforce prohibited provisions, including by using technological protection measures. But they may seek resolution of disputes over these provisions in a judicial forum.

The bill additionally establishes a state penalty for violations related to the state library or a state agency library. It creates parallel local option penalties for violations related to public or public school libraries.

State Penalty for State Library and Agency Libraries

In the case of the Connecticut State Library or other state government-associated libraries, the state librarian or agency may request that the attorney general file a civil action in the Hartford Superior Court for injunctive or other equitable relief in addition to the civil penalty the bill creates. The state penalty is \$500 per violation, up to an aggregate of \$4,500.

Municipal Penalty for Public and School Libraries

The bill allows municipalities to, by ordinance, establish a civil penalty of up to \$500, up to an aggregate of \$4,500, for violations concerning municipal libraries or public elementary or secondary school libraries. The bill authorizes publishers, or others issued a penalty, to appeal the penalty to the Superior Court.

Related Bill

sHB 6800, favorably reported by the Planning and Development Committee, contains similar provisions on contracts or agreements that

prevent a library from performing customary operational and lending functions and additionally (1) makes a publisher's violation of the bill a Connecticut Unfair Trades Practices Act violation and (2) deems a contract or agreement with the prohibited terms unconscionable under the Uniform Commercial Code.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 14 Nay 4 (03/24/2023)