



House of Representatives

General Assembly

File No. 407

January Session, 2023

Substitute House Bill No. 6800

House of Representatives, April 4, 2023

The Committee on Planning and Development reported through REP. KAVROS DEGRAW of the 17th Dist., Chairperson of the Committee on the part of the House, 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, 2023*) (a) As used in this section:
- 2 (1) "Electronic literary material" means any digital audiobook or
3 electronic book;
- 4 (2) "Digital audiobook" means a sound recording of a reading of any
5 literary production that has been converted into or published in a digital
6 audio file that may be listened to on a computer or portable electronic
7 device;
- 8 (3) "Electronic book" means a text document converted into or
9 published in a digital format that may be read on a computer or portable
10 electronic device;
- 11 (4) "Portable electronic device" means any self-contained electronic

12 device for personal use for communicating, reading, viewing, listening,
13 playing video games or computing, including, but not limited to, a
14 mobile telephone, tablet computer, electronic book reader and other
15 similar devices;

16 (5) "Library" includes any (A) public library; (B) public elementary
17 school or secondary school library; (C) tribal library; (D) academic
18 library; (E) research library; (F) public archive; and (G) the Connecticut
19 State Library;

20 (6) "Publisher" means any person in the business of the manufacture,
21 promulgation, license or sale of books, audiobooks, journals, magazines,
22 newspapers or other literary productions, including those in the form of
23 electronic literary materials, and includes any aggregator who enters
24 into a contract with any library for the purpose of providing materials
25 for purchase or license from any publisher;

26 (7) "Aggregator" means any person in the business of licensing access
27 to electronic literary material collections that include electronic literary
28 material from multiple publishers;

29 (8) "Technological protection measure" means any technology that
30 enhances the security of loaning or circulating electronic literary
31 materials by a library;

32 (9) "Borrower" means any person or organization, including another
33 library, to whom a library loans media of any type;

34 (10) "Loan" means the creation and transmission by a library to a
35 borrower of a copy of any electronic library material and the deletion of
36 such copy by the library upon the expiration of the loan period; and

37 (11) "Loan period" means the time between the creation and
38 transmission by a library to a borrower of a copy of any electronic
39 library material and the deletion of such copy by the library, as
40 determined by the library.

41 (b) The provisions of this section shall apply to any contract offered,

42 entered into or renewed by a publisher for the license of any electronic
43 literary material to any library in the state on and after October 1, 2023.

44 (c) No contract or license agreement between any publisher and any
45 library in this state shall preclude, limit or restrict the library from
46 performing customary operational or lending functions, including any
47 provision that:

48 (1) Prohibits the library from loaning any electronic literary material,
49 including through any interlibrary loan system;

50 (2) Restricts the number of times the library may loan any electronic
51 literary material over the course of the license agreement if such
52 agreement also restricts the library's loan period for electronic literary
53 material;

54 (3) Limits the number of electronic literary material licenses the
55 library may purchase on the same date such electronic literary material
56 is made available for purchase by the public;

57 (4) Prohibits the library from making nonpublic preservation copies
58 of any electronic literary material;

59 (5) Restricts the library from disclosing the terms of the license
60 agreement to any other library in the state;

61 (6) Restricts the duration of the license agreement unless the
62 publisher has also offered the library a license agreement (A) based on
63 a pay-per-use model, or (B) that provides for the perpetual public use of
64 the electronic literary material upon commercially reasonable terms in
65 consideration of the library's mission; or

66 (7) Requires the library to violate the provisions of section 11-25 of
67 the general statutes.

68 (d) A contract or license agreement between a publisher and a library
69 may require:

70 (1) A limitation on the number of borrowers the library may allow to

71 have simultaneous access to any electronic literary material; or

72 (2) The library's reasonable use of any technological protection
73 measure that prevents a borrower from:

74 (A) Maintaining access to any electronic literary material beyond the
75 access period specified in the license; and

76 (B) Providing other borrowers with access to any electronic literary
77 material.

78 (e) Any publisher that violates the provisions of this section shall
79 have committed an unfair trade practice under subsection (a) of section
80 42-110b of the general statutes.

81 (f) Any contract or license agreement concerning electronic literary
82 material that includes provisions prohibited by section (c) of this section
83 is unconscionable within the meaning of section 42a-2-302 of the general
84 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	New section

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 24 \$	FY 25 \$
Consumer Protection, Dept.	GF - Potential Cost	105,299	143,908
State Comptroller - Fringe Benefits ¹	GF - Potential Cost	45,089	61,621
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 24 \$	FY 25 \$
Various Municipalities, Various Local and Regional School Districts	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 a potential cost to the state due to the enforcement provisions and a potential savings to public entities that operate libraries, beginning in FY 24.

The bill prohibits certain licensure and contract agreements between libraries and electronic book publishers and makes violations an unfair

¹The 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 42.82% of payroll in FY 24.

trade practice resulting in a potential cost of \$105,299 in FY 24² and \$143,908 in FY 25 to the Department of Consumer Protection, and potential associated fringe benefit costs of \$45,089 in FY 24 and \$61,621 in FY 25.

To the extent that violations occur DCP may have to hire one special investigator and one paralegal. These positions will manage and review the complaints, investigate the cases, and 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 ongoing fiscal impact identified above would continue into the future subject to inflation and contract terms.

² Costs for FY 24 reflect 9 months of expenditures due to the bill's October 1st effective date.

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)