



House of Representatives

General Assembly

File No. 586

January Session, 2023

Substitute House Bill No. 6829

House of Representatives, April 13, 2023

The Committee on Government Administration and Elections reported through REP. BLUMENTHAL of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

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 that has been converted
- 9 into or published in a digital format that may be read on a computer or
- 10 portable 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 period of time commencing with the
38 creation and transmission by a library to a borrower of a copy of any
39 electronic library material and concluding with the deletion of such
40 copy by the library, as determined by the library.

41 (b) The provisions of this section shall apply to any contract or license
42 agreement entered into or renewed on and after October 1, 2023, by a
43 library in the state with a publisher for the license of any electronic
44 literary material.

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

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

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

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

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

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

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

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

69 (d) A contract or license agreement between a publisher and a library

70 may require:

71 (1) A limitation on the number of borrowers the library may allow to
72 have simultaneous access to any electronic literary material; or

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

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

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

79 (e) Any contract or license agreement concerning electronic literary
80 material that includes provisions described in subdivisions (1) to (7),
81 inclusive, of subsection (c) of this section shall be unenforceable as to
82 those provisions.

83 (f) No person shall attempt to enforce a provision described in
84 subdivisions (1) to (7), inclusive, of subsection (c) of this section against
85 a library, including, but not limited to, by means of a technological
86 protection measure, except that a person may seek resolution of a
87 dispute concerning such provision in a judicial forum. Any violation of
88 this subsection shall be subject to a civil penalty of five hundred dollars
89 per violation imposed either under subsection (g) or (h) of this section,
90 as applicable, provided such penalty shall not exceed four thousand five
91 hundred dollars in the aggregate.

92 (g) Any municipality may, by ordinance, establish a civil penalty for
93 a violation of subsection (f) of this section that concerns a public or
94 public elementary or secondary school library of such municipality of
95 not more than five hundred dollars per violation, provided such penalty
96 shall not exceed four thousand five hundred dollars in the aggregate.
97 Any person who is assessed a civil penalty pursuant to this subsection
98 may appeal therefrom to the Superior Court in the manner provided in
99 subsection (g) of section 7-152c of the general statutes.

100 (h) In the case of the Connecticut State Library or another library of a
 101 state agency, as defined in section 1-79 of the general statutes, the State
 102 Librarian or such state agency, as applicable, may request the Attorney
 103 General to institute a civil action in the superior court for the judicial
 104 district of Hartford for injunctive or other equitable relief or to recover
 105 a civil penalty pursuant to subsection (f) of this section.

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

Statement of Legislative Commissioners:

In Subsecs. (e) and (f), "prohibited" was replaced with "described" for accuracy, in Subsec. (f), "against a library" was added for consistency with legislative intent and "imposed either under subsection (g) or (h) of this section, as applicable" was added for clarity and in Subsec. (g), "7-152b" was changed to "7-152c" for accuracy.

GAE *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 \$
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below
Higher Education Constituent Units;	Various - Potential Savings	See Below	See Below
Library, CT State	GF - Potential Savings	See Below	See Below

Note: GF=General Fund; Various=Various

Municipal Impact:

Municipalities	Effect	FY 24 \$	FY 25 \$
Local and Regional School Districts	Potential Savings	See Below	See Below
Various Municipalities	Potential Revenue Gain	See Below	See Below

Explanation

This bill results in potential savings and potential revenue gain. The purpose of the bill is to make unenforceable certain conditions for purchasing electronic material as owned by state libraries. This bill may result in potential savings for local and regional school districts and the Connecticut State Library, depending on the number and cost of material exempted from existing contracts with this bill. The bill may also result in potential revenue gain to various municipalities beginning in FY 24 depending on the number of civil penalties collected.

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 bill also authorizes civil penalties for companies attempting to enforce contracts that are unenforceable up to \$500 per violation and up to \$4,500 overall. This bill also authorizes municipalities to impose their own penalties up to the penalties imposed by the state. The revenue generated will depend on the number of violations and the amount in civil penalties imposed by each municipality.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

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)