
OLR Bill Analysis

HB 5312

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

SUMMARY

This bill prohibits certain libraries from entering into or renewing contracts and licensing agreements (collectively referred to as “agreements” below) with publishers of electronic literary materials (i.e., electronic books (ebooks) and digital audiobooks) that prevent, limit, or restrict the library from performing customary operational or lending functions. It applies to agreements entered or renewed on and after July 1, 2026.

The bill outlines specifically prohibited and allowable agreement terms, particularly with respect to lending these electronic literary materials (“materials”). Under the bill, prohibited terms are unenforceable and attempts to enforce them against a library are a Connecticut Unfair Trades Practices Act (CUTPA, see BACKGROUND) violation, enforced by the attorney general. But individuals may seek a judicial resolution for disputes about these prohibited terms.

“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 include the Connecticut State Library and any of the following that are partially or fully funded (e.g., through grants, loans, insurance, or matching expenditures) by the state or one of its political subdivisions for a number of fiscal years the bill specifies: public libraries; secondary school or public elementary school libraries;

academic, research, or tribal libraries; and public archives. (It is unclear if (1) a recipient is considered a covered library after receiving funding in just one year and, if so, for which fiscal years it is then considered covered or (2) recipients must be funded for several consecutive years to be considered covered.)

EFFECTIVE DATE: July 1, 2026, and applicable to contracts or license agreements entered into or renewed on or after that date.

CONTRACT OR LICENSE AGREEMENT TERMS

Prohibited Terms

The bill generally prohibits libraries from entering or renewing agreements with publishers that prevent, limit, or restrict their ability to perform customary operational or lending functions. Specific provisions that a library may not agree to (and that may not be enforced against the library, including through technological measures) include those that:

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

Permissible Terms

The bill also specifies that the following terms do not violate the bill’s requirements:

1. a limit on the number of simultaneous borrowers; and
2. requiring the library to make reasonable use of technological measures that prevent a borrower from (a) maintaining access to material beyond the agreement’s allowable 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.

Related Bills

sSB 148, File 48, favorably reported by the Planning and Development Committee, is substantively identical to this bill.

sHB 5236, File 103, § 25, favorably reported by the General Law Committee, among other things, allows the Department of Consumer Protection to impose a civil penalty of up to \$5,000 for CUTPA violations, after an administrative hearing.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable
Yea 14 Nay 5 (03/22/2024)