



House of Representatives

General Assembly

File No. 444

February Session, 2024

House Bill No. 5312

House of Representatives, April 11, 2024

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 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 July 1, 2026, and applicable to contracts or*
2 *license agreements entered into or renewed on or after said date*) (a) As used
3 in this section:

4 (1) "Electronic literary material" means any digital audiobook or
5 electronic book;

6 (2) "Digital audiobook" means a sound recording of a reading of any
7 literary production that has been converted into or published in a digital
8 audio file that may be listened to on a computer or portable electronic
9 device;

10 (3) "Electronic book" means a text document that has been converted
11 into or published in a digital format that may be read on a computer or

12 portable electronic device;

13 (4) "Portable electronic device" means any self-contained electronic
14 device for personal use for communicating, reading, viewing, listening,
15 playing video games or computing, including, but not limited to, a
16 mobile telephone, tablet computer, electronic book reader or other
17 similar device;

18 (5) "Library" includes (A) (i) any public library, public elementary
19 school library, secondary school library, tribal library, academic library,
20 research library or public archive, (ii) that is funded directly or
21 indirectly, in whole or in part, during a fiscal year by the state or a
22 political subdivision of the state, including, but not limited to, matching
23 expenditures, grants, loans, bonding, insurance or guarantees, and (iii)
24 for the duration of the fiscal year after the receipt of such funding and
25 the fiscal year next succeeding; and (B) the Connecticut State Library;

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

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

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

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

40 (10) "Loan" means the creation and transmission by a library to a
41 borrower of a copy of any electronic literary material and the deletion
42 of such copy by the library upon the expiration of the loan period; and

43 (11) "Loan period" means the period of time commencing with the
44 creation and transmission by a library to a borrower of a copy of any
45 electronic literary material and concluding with the deletion of such
46 copy by the library, as determined by the library.

47 (b) The provisions of this section shall apply to any contract or license
48 agreement entered into or renewed on and after July 1, 2026, by a library
49 in the state with a publisher for the license of any electronic literary
50 material.

51 (c) On and after July 1, 2026, no library in this state shall enter into or
52 renew any contract or license agreement with a publisher that
53 precludes, limits or restricts the library from performing customary
54 operational or lending functions, including any provision that:

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

57 (2) Restricts the number of times the library may loan any electronic
58 literary material over the course of the license agreement if such
59 agreement also restricts the library's loan period for electronic literary
60 material;

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

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

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

68 (6) Restricts the duration of the contract or license agreement unless
69 the library also has the option of a contract or license agreement on
70 commercially reasonable terms in consideration of the library's mission,
71 that either (A) is based on a pay-per-use model, or (B) provides for the
72 perpetual public use of the electronic literary material; or

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

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

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

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

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

83 (B) Providing other borrowers with access to any electronic literary
84 material.

85 (e) Any contract or license agreement concerning electronic literary
86 material that includes provisions prohibited by subdivisions (1) to (7),
87 inclusive, of subsection (c) of this section shall be unenforceable only as
88 to those provisions.

89 (f) No person shall attempt to enforce a provision described in
90 subdivisions (1) to (7), inclusive, of subsection (c) of this section against
91 a library, including, but not limited to, by means of a technological
92 protection measure, except that a person may seek resolution of a
93 dispute concerning such provision in a judicial forum. Any violation of
94 the provisions of this subsection shall constitute an unfair trade practice
95 for purposes of subsection (a) of section 42-110b of the general statutes
96 and shall be enforced by the Attorney General.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2026, and applicable to contracts or license agreements entered into or renewed on or after said date</i>	New section
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GAE *Joint Favorable*

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 25 \$	FY 26 \$	FY 27 \$
Library, CT State	GF - Potential Savings	None	None	See Below
Higher Education Constituent Units	Various - Potential Savings	None	None	See Below
Attorney General	GF - Potential Revenue Gain	None	None	See Below

Note: GF=General Fund; Various=Various

Municipal Impact:

Municipalities	Effect	FY 25 \$	FY 26 \$	FY 27 \$
Various Municipalities; Various Local and Regional School Districts	Potential Savings	None	None	See Below

Explanation

Beginning in FY 27, the bill prohibits certain licensure and contract agreements between libraries and electronic book publishers and makes violations an unfair trade practice.

To the extent the bill produces e-book lending terms that are more favorable to libraries, the bill may result in a savings beginning in FY 27 to publicly funded 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.

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.

Additionally, the bill requires the Office of the Attorney General to enforce any violations of the bill's provisions, which constitute an unfair trade practice and may result in a General Fund revenue gain, beginning in FY 27.

The Out Years

The ongoing fiscal impact identified above would continue into the future subject to inflation and contract terms.

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)