



Senate

General Assembly

File No. 48

February Session, 2024

Substitute Senate Bill No. 148

Senate, March 19, 2024

The Committee on Planning and Development reported through SEN. RAHMAN of the 4th Dist., Chairperson of the Committee on the part of the Senate, 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 July 1, 2026*) (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 (A) any public library, public elementary
17 school library, secondary school library, tribal library, academic library,
18 research library or public archive that is funded (i) directly or indirectly,
19 in whole or in part, during a fiscal year by the state or a political
20 subdivision of the state, including, but not limited to, matching
21 expenditures, grants, loans, bonding, insurance or guarantees, and (ii)
22 for the duration of the fiscal year after the receipt of such funding and
23 the fiscal year next succeeding; and (B) the State Library;

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

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

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

36 (9) "Borrower" means any person or organization, including another
37 library, to whom a library loans a copy of electronic literary material;

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

41 (11) "Loan period" means the period of time commencing with the

42 creation and transmission by a library to a borrower of a copy of any
43 electronic literary material and concluding with the deletion of such
44 copy by the library, as determined by the library.

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

49 (c) No library in this state shall enter into any contract or license
50 agreement with a publisher that precludes, limits or restricts the library
51 from performing customary operational or lending functions, including
52 any provision that:

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

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

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

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

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

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

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

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

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

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

79 (A) Maintaining access to any electronic literary material beyond the
80 access period specified in the contract or license agreement; and

81 (B) Providing other borrowers with access to any electronic literary
82 material.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2026	New section

Statement of Legislative Commissioners:

In Subsec. (a)(9), "media of any type" was changed to "a copy of electronic literary material" for internal consistency; in Subsec. (c)(2), "contract or" was added before "license agreement" and "contract or" was added before "agreement" for internal consistency; and in Subsec. (d)(2)(A), "license" was changed to "contract or license agreement" for internal consistency.

PD *Joint Favorable Subst. -LCO*

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**SB 148*****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 contracts and licensing agreements 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 contract 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

CONTRACT OR LICENSE AGREEMENT TERMS

Prohibited Terms

The bill generally prohibits libraries from entering contracts or 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 license agreement if the agreement 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 a contract or license agreement's terms to another Connecticut library;
6. restrict the duration of the contract or license agreement, unless the library also has the option of a contract or 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 license’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.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable
Yea 19 Nay 1 (03/01/2024)