

Honolulu, Hawaii

MAR 24 2023

RE: H.B. No. 1412
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Education, to which was referred H.B. No. 1412, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO LIBRARIES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit any contract or license agreement between a publisher and library in the State from precluding, limiting, or otherwise restricting the library from performing customary operational and lending functions; restricting the library from disclosing any terms of its license agreements to other libraries; and requiring, coercing, or enabling a library to violate rules regarding confidentiality of a patron's library records; and
- (2) Deem contracts that contain prohibited provisions an unfair or deceptive act or practice and void and unenforceable.

Your Committee received testimony in support of this measure from the Department of Education, Hawaii State Public Library System, and two individuals. Your Committee received testimony in opposition to this measure from the Association of American



Publishers, Inc.; The Yellowkeed Corporation; Bess Press, Inc.; Independent Book Publishers Association; Left Coast Creative, Inc.; Copyright Alliance; The Authors Guild; and thirty-one individuals. Your Committee received comments on this measure from the University of Hawai'i System.

Your Committee finds that the digital resource landscape is rapidly changing, creating new licensing models that are being developed and offered by publishers. Digital books have become a vital part of library collections across the State, with over one million digital books in circulation within the Hawaii State Public Library System. However, certain licensing models are prohibitive, as publishers may place embargoes on the release date of high demand titles for digital copies offered at public libraries. Additionally, publishers may charge higher fees for leases of digital copies, rather than rights to ownership, that are four to five times higher than traditional physical copies. This measure maintains the diversity of books available at public libraries while also providing equitable access to digital books for Hawaii residents.

Should your Committee on Judiciary choose to deliberate on this measure, your Committee respectfully requests that it consider intellectual property and copyright law concerns raised by the Department of the Attorney General. Additionally, your Committee respectfully requests your Committee on Judiciary to also consider any potential litigation concerns regarding this measure.

Your Committee has amended this measure by:

- (1) Deleting academic libraries, research libraries, and special libraries from the definition of "library";
- (2) Prohibiting a library from producing a printed copy of electronic literary material purchased by a library;
- (3) Inserting language to exempt any existing contracts that are currently in force providing libraries with electronic literary products from vendors and aggregators from the provisions of this measure; and



- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1412, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1412, H.D. 1, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Education,


MICHELLE N. KIDANI, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Education
EDU

Bill / Resolution No.:*	Committee Referral:	Date:
HB1412, HD1	EDU, JDC	3/22/23


The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KIDANI, Michelle N. (C)	/			
KIM, Donna Mercado (VC)	/			
KANUHA, Dru Mamo	/			
RICHARDS, III, Herbert M. "Tim"		/		
FEVELLA, Kurt				/
TOTAL	3	1		1

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:


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*Only one measure per Record of Votes