

Honolulu, Hawaii

APR 06 2023

RE: H.B. No. 1412
H.D. 1
S.D. 2

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

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1412, H.D. 1, S.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;
- (2) Deem contracts that contain prohibited provisions an unfair or deceptive act or practice and void and unenforceable;
- (3) Prohibit libraries from copying or printing purchased electronic literary material; and



- (4) Exempt existing contracts that provide libraries with electronic literary products from vendors and aggregators.

Your Committee received testimony in support of this measure from the Department of Education, Hawai'i State Public Library System, and two individuals. Your Committee received testimony in opposition to this measure from The Authors Guild; Copyright Alliance; Motion Picture Association; Software & Information Industry Association; Independent Book Publishers Association; Association of American Publishers; American Booksellers Association; News/Media Alliance; American Society of Composers, Authors & Publishers; Broadcast Music Inc; Digital Media Licensing Association; National Press Photographers Association; Recording Industry Association of America; American Association of Independent Music; American Society of Media Photographers; Entertainment Software Association; Independent Film & Television Alliance; National Music Publishers' Association; and one individual. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that the digital resource landscape is rapidly changing and new licensing models are being developed and offered by publishers to state libraries. In the past decade, publishers have moved away from public libraries being allowed to own e-books and towards a licensing or leasing model, which may come at a high cost. This measure will help ensure that the state libraries continue to have the ability to enter into licensing agreements with aggregators and publishers for a reasonable price.

Your Committee has amended this measure by:

- (1) Specifying that no contract entered between any publisher and library in the State shall preclude, limit, or restrict the library from performing customary operational functions including any provision that:
 - (A) Requires the library to acquire a license for any electronic literary material at a price greater than that charged to the public for the same item in accordance with federal law; and



- (B) Restricts the total number of times a library may loan any licensed electronic literary materials over the course of any license agreement and if the publisher offers a license agreement to libraries for perpetual public use without the restrictions, it shall be at a price that is considered reasonable and equitable as agreed to by both parties; and
- (2) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1412, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1412, H.D. 1, S.D. 2.

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



KARL RHOADS, Chair



