
A BILL FOR AN ACT

RELATING TO LIBRARIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **CONTRACT AND LICENSE AGREEMENTS FOR ELECTRONIC BOOKS**

6 § -1 **Definitions.** As used in this chapter:

7 "Aggregator" means one whose business is the licensing of
8 access to electronic literary material collections that include
9 electronic literary material from multiple publishers.

10 "Borrower" means a person or organization, including
11 another library, to whom the library loans electronic literary
12 materials of any sort.

13 "Digital audiobook" means a published work that is in the
14 form of a voice recording or narrated and released as a digital
15 audio file.

16 "Electronic book" means a published work that is in written
17 form and released as a digital text file.



1 "Electronic literary materials" means digital audiobooks or
2 electronic books.

3 "Library" means:

- 4 (1) Public libraries, including elementary or secondary
- 5 school libraries;
- 6 (2) Academic libraries;
- 7 (3) Research libraries;
- 8 (4) Special libraries;
- 9 (5) Talking book libraries; and
- 10 (6) Archives.

11 "Loan" means to create and transmit to a borrower a copy of
12 electronic literary material and delete it at the end of the
13 loan period.

14 "Loan period" means the time between the transmission of
15 electronic literary material to a borrower and the copy's
16 deletion, as determined by any individual library.

17 "Publisher" means one whose business is the manufacture,
18 promulgation, license, or sale of books, audiobooks, journals,
19 magazines, newspapers, or other literary productions including
20 those in the form of electronic literary materials. "Publisher"
21 includes aggregators who enter into contracts with libraries for



1 the purposes of providing materials for purchase or license from
2 the publishers.

3 "Technological protection measures" means any technology
4 that ensures the secure loaning or circulation by a library of
5 electronic literary materials.

6 "Virtually" means transmitted to receiving parties via the
7 Internet in a way that the transmission appears in front of the
8 receiving parties on a computer, tablet, smart phone, or
9 electronic device.

10 § -2 **Contracts between publishers and libraries.** (a)

11 No contract or license agreement entered into between any
12 publisher and any library in the State shall:

- 13 (1) Preclude, limit, or restrict the library from
14 performing customary operational functions, including:
15 (A) Licensing electronic literary materials;
16 (B) Employing technological protection measures as is
17 necessary to loan electronic literary materials;
18 (C) A library's right to make non-public preservation
19 copies of electronic literary materials; and
20 (D) A library's right to loan electronic literary
21 materials via interlibrary loan systems;



- 1 (2) Preclude, limit, or restrict the library from
2 performing customary lending functions, including any
3 provision that:
- 4 (A) Precludes, limits, or restricts the library from
5 loaning electronic literary materials to
6 borrowers;
- 7 (B) Restricts the library's right to determine loan
8 periods for licensed electronic literary
9 materials;
- 10 (C) Requires the library to acquire a license for any
11 electronic literary material at a price greater
12 than that charged to the public for the same
13 item;
- 14 (D) Restricts the number of licenses for electronic
15 literary materials that the library may acquire
16 after the same item is made available to the
17 public;
- 18 (E) Requires the library to pay a cost per
19 circulation fee to loan electronic literary
20 materials, unless substantially lower in



- 1 aggregate than the cost of purchasing the item
2 outright;
- 3 (F) Restricts the total number of times a library may
4 loan any licensed electronic literary materials
5 over the course of any license agreement, or
6 restricts the duration of any license agreement,
7 unless the publisher offers a license agreement
8 to libraries for perpetual public use without
9 such restrictions, at a price that is considered
10 reasonable and equitable as agreed to by both
11 parties; and
- 12 (G) Restricts or limits the library's ability to
13 virtually recite text and display artwork of any
14 materials to library patrons such that the
15 materials would not have the same educational
16 utility as when recited or displayed at a
17 library;
- 18 (3) Restrict the library from disclosing any terms of its
19 license agreements to other libraries; and
- 20 (4) Require, coerce, or enable the library to violate the
21 law protecting the confidentiality of a patron's



1 library records as specified in section 8-200.5-3,
2 Hawaii Administrative Rules.

3 § -3 Remedies. (a) An offer to license electronic
4 literary materials to a library that includes a prohibited
5 provision listed in section -2 shall constitute an unfair or
6 deceptive act or practice within the meaning of section 480-2
7 and shall be deemed void and unenforceable pursuant to section
8 480-12. Any remedy provided pursuant to section 480-13 shall be
9 available for the enforcement of this chapter. Actions for
10 relief pursuant to this section may be brought by libraries,
11 library officers, or borrowers. Parties shall be enjoined from
12 enforcing license agreements that include a prohibited provision
13 under section -2.

14 (b) A contract to license electronic literary materials to
15 a library that includes prohibited provisions under section
16 -2 shall be unconscionable within the meaning of section
17 490:2-302 and shall be deemed unenforceable and void. Any
18 attempt to waive any provisions of this chapter is contrary to
19 public policy and shall be deemed unenforceable and void."

20 SECTION 2. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



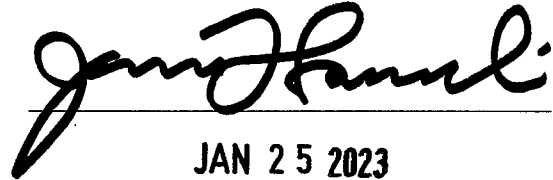
H.B. NO. 1412

1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 3. This Act shall take effect upon its approval;
6 provided that this Act shall apply to contracts between
7 publishers and libraries entered into or renewed after the
8 effective date of this Act.

9

INTRODUCED BY:


JAN 25 2023



H.B. NO. 1412

Report Title:

Libraries; Publishers; Electronic Books; Contracts; Licensing Agreements; Unfair or Deceptive Acts or Practices

Description:

Prohibits 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. Deems contracts that contain prohibited provisions an unfair or deceptive act or practice and void and unenforceable.

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