STATE OF NEW YORK

6868--A

2023-2024 Regular Sessions

IN SENATE

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Introduced by Sens. CHU, FERNANDEZ, MAY, RYAN, SCARCELLA-SPANTON -- read twice and ordered printed, and when printed to be committed to the Committee on Libraries -- recommitted to the Committee on Libraries in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to protecting library access to electronic literary materials

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new section 286 to read as follows:

§ 286. Access to electronic books and digital audiobooks. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Digital audiobook" means a published work that is in the form of a voice recording (narrated) and is released as a digital audio file;

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

c. "Electronic literary materials" means digital audiobooks and/or electronic books;

d. "Libraries" includes:

(1) public libraries;

(2) public elementary school or secondary school libraries;

(3) tribal libraries;

(4) academic libraries;

(5) research libraries; and

(6) archives;

e. "Publisher" means one whose business is the manufacture, promulgation, license, and/or sale of books, audiobooks, journals, magazines,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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newspapers, or other literary productions including those in the form of electronic literary materials;

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

g. "Literary monograph" means a literary work that is published in one volume or a finite number of volumes;

h. "Technological protection measures" means any technology that enhances the secure loaning and/or circulation by a library of electronic literary materials;

i. "Borrower" means a person or organization, including another library, to whom the library loans media of any sort;

j. "Virtually" means transmitted to receiving parties via the internet in such a way that the transmission appears in front of the receiving parties on a computer, tablet, smart phone, or electronic device;

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

l. "Loan period" means the time between the transmission of electronic literary material to a borrower and the copies' deletion, as determined by any individual library.

2. a. Any contract offered by a publisher to a library located in the state for the purposes of licensing electronic literary material to the public shall be governed by the laws of this state.

b. Any contract to purchase or license electronic literary materials that includes a prohibited provision as enumerated in subdivision three of this section is unconscionable pursuant to section 2-302 of the uniform commercial code in violation of public policy in this state and is deemed unenforceable and void. Any waiver of the provisions of this section is contrary to public policy and shall be deemed unenforceable and void.

c. The prohibited provisions as enumerated in subdivision three of this section shall only apply to licensing agreements governing the use of literary monographs.

d. The prohibited provisions as enumerated in subdivision three of this section shall not apply to licensing agreements between libraries and aggregators.

3. A contract between a library and a publisher to purchase or license electronic literary material shall not contain any provision that:

a. precludes, limits, or restricts the library from performing their core missions, including any provision that:

(1) precludes, limits, or restricts the library from licensing electronic literary materials;

(2) bars the library from loaning electronic literary materials to borrowers;

(3) restricts or limits the library's right to loan the electronic literary materials to borrowers using technological protection measures;

(4) restricts or limits the use of technological protection measures for loaning the work to borrowers;

(5) restricts or limits the library's right to make non-public preservation copies of the electronic literary materials;

(6) restricts or limits the library's right to loan electronic literary materials via interlibrary loan systems; or

(7) restricts or limits the library's ability to virtually recite text and display artwork of any materials to library patrons such that the materials would not have the same educational utility as when recited or displayed at a library facility.

b. restricts the number of licenses for electronic literary materials that the library may acquire after the same item is made available to the public;

c. 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;

d. restricts the library's right to determine loan periods for licensed electronic literary materials;

e. restricts the total number of times the library may loan any licensed electronic literary materials over the course of any license agreement;

f. restricts the duration of any licensing agreements;

g. restricts the library from disclosing any terms of its license agreements to other libraries; or

h. requires the library to violate the law protecting the confidentiality of a patron's library records pursuant to section forty-five hundred nine of the civil practice law and rules.

4. a. Any contract to purchase or license electronic literary materials that includes a prohibited provision listed in subdivision three of this section shall constitute an unfair and deceptive act pursuant to section three hundred forty-nine of the general business law, and any remedy provided pursuant to article twenty-two-A of the general business law shall be available for the enforcement of this section.

b. Any publisher may seek the opinion of the attorney general for guidance on how to comply with the provisions of this section.

c. Actions for relief pursuant to this section may be brought by libraries, library officers, or borrowers or shall be brought by the attorney general.

d. Any publisher that violates any provision of this section shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars for each violation or seven thousand five hundred dollars for each intentional violation, to be imposed by the court.

§ 2. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately.