

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:

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

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

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

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

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

12 d. "Libraries" includes:

13 (1) public libraries;

14 (2) public elementary school or secondary school libraries;

15 (3) tribal libraries;

16 (4) academic libraries;

17 (5) research libraries; and

18 (6) archives;

19 e. "Publisher" means one whose business is the manufacture, promulga-
20 tion, 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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1 newspapers, or other literary productions including those in the form of
2 electronic literary materials;

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

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

8 h. "Technological protection measures" means any technology that
9 enhances the secure loaning and/or circulation by a library of electron-
10 ic literary materials;

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

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

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

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

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

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

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

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

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

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

41 (1) precludes, limits, or restricts the library from licensing elec-
42 tronic literary materials;

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

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

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

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

51 (6) restricts or limits the library's right to loan electronic liter-
52 ary materials via interlibrary loan systems; or

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

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

4 c. requires the library to acquire a license for any electronic liter-
5 ary material at a price greater than that charged to the public for the
6 same item;

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

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

12 f. restricts the duration of any licensing agreements;

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

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

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

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

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

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

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

43 § 3. This act shall take effect immediately.