

STATE OF NEW YORK

6868

2023-2024 Regular Sessions

IN SENATE

May 12, 2023

Introduced by Sens. CHU, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Libraries

AN ACT to amend the education law, in relation to allowing library access to electronic books and digital audiobooks

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. Electronic books and digital audiobooks. 1. Definitions. For
4 purposes of this section, the following terms shall have the following
5 meanings:

6 a. "Aggregator" shall mean one whose business is the selling or
7 licensing of access to collections of electronic literary material from
8 multiple publishers.

9 b. "Borrower" shall mean a person or organization, including another
10 library, to whom a library loans electronic literary material.

11 c. "Digital audiobook" shall mean a published work that is in the form
12 of a narrated voice recording and is released as a digital audio file.

13 d. "Electronic book" shall mean a published work that is in written
14 form and is released as a digital text file.

15 e. "Electronic literary material" means digital audiobooks and/or
16 electronic books.

17 f. "Libraries" shall include:

18 (1) public libraries;

19 (2) free association libraries;

20 (3) school libraries and school library systems;

21 (4) Indian libraries;

22 (5) professional and technical libraries;

23 (6) academic and research libraries;

24 (7) special libraries;

25 (8) talking book and braille libraries; and

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

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1 (9) archives.

2 g. "Loan" shall mean to create and transmit to a borrower a copy of
3 electronic literary material and delete it at the end of the loan peri-
4 od.

5 h. "Loan period" shall mean the time between the transmission to a
6 borrower of a copy of electronic literary material and such copies'
7 deletion, as determined by the library providing the loan.

8 i. "Publisher" shall mean:

9 (1) one whose business is the manufacture, promulgation, license,
10 and/or sale of books, audiobooks, journals, magazines, newspapers, or
11 other literary productions, including electronic literary materials; and

12 (2) an aggregator who enters into contracts with libraries for the
13 purposes of licensing electronic literary material.

14 j. "Technological protection measures" shall mean any technology that
15 ensures the secure loaning and/or circulation by a library of electronic
16 literary material.

17 k. "Virtually" shall mean transmitted to receiving parties via the
18 Internet in such a way that such transmission appears before such
19 receiving parties on a computer, tablet, smart phone, or other electron-
20 ic device.

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

25 b. A contract between a library and a publisher to provide such
26 library with electronic literary material shall not contain any
27 provision that:

28 (1) precludes, limits, or restricts the library from performing
29 customary operational and lending functions, including:

30 (i) licensing electronic literary material from publishers;

31 (ii) loaning electronic literary material to borrowers;

32 (iii) employing technological protection measures as is necessary to
33 loan electronic library material;

34 (iv) making non-public preservation copies of electronic literary
35 material;

36 (v) loaning electronic literary material via interlibrary loan
37 systems;

38 (vi) determining loan periods for licensed electronic literary materi-
39 al;

40 (vii) virtually reciting text and displaying artwork of any material
41 to library patrons at a library facility, such that such material would
42 not have the same educational utility without such virtual recitation or
43 display; and

44 (viii) disclosing any terms of its license agreements to other
45 libraries;

46 (2) limits or restricts:

47 (i) the number of licenses for electronic literary material that a
48 library may acquire after such material is made available to the public;
49 or

50 (ii) the total number of times that a library may loan any licensed

51 electronic literary material over the course of any license agreement,
52 or the duration of any license agreement, unless the publisher also
53 offers to such library a license agreement for perpetual public use of
54 such electronic literary material without such limits or restrictions,
55 at a price which is considered reasonable and equitable and agreed to by
56 both parties; or

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1 (3) requires, coerces, or enables a library to:
2 (i) acquire a license for any electronic literary material at a price
3 greater than that charged to the public for such material;
4 (ii) pay a cost-per-circulation fee to loan electronic literary mate-
5 rial, unless such fee is substantially lower in aggregate than the cost
6 of purchasing such material; or
7 (iii) violate the law protecting the confidentiality of a patron's
8 library records pursuant to section forty-five hundred nine of the civil
9 practice law and rules.

10 3. Unfair and deceptive trade practices; unconscionability; remedies.
11 a. (1) Offers to license electronic literary material that include a
12 provision that is prohibited pursuant to paragraph b of subdivision two
13 of this section shall constitute unfair and deceptive trade practices
14 pursuant to section three hundred forty-nine of the general business
15 law, and any remedy provided pursuant to article twenty-two-A of the
16 general business law shall be available for the enforcement of this
17 section.

18 (2) Actions for relief pursuant to this section may be brought by
19 libraries, library officers, or borrowers.

20 (3) Parties shall be enjoined by the courts from enforcing license
21 agreements that include a provision that is prohibited pursuant to para-
22 graph b of subdivision two of this section.

23 b. Contracts to license electronic literary material that include a
24 provision that is prohibited pursuant to paragraph b of subdivision two
25 of this section shall be unconscionable pursuant to section 2-302 of the
26 uniform commercial code in violation of the public policy of this state
27 and shall be deemed unenforceable and void. Any waiver of the provisions
28 of this section shall be deemed unenforceable and void.

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

34 4. Existing contracts. Nothing in this section shall apply to existing
35 contracts between libraries and publishers to provide such libraries
36 with electronic literary material that are in force prior to the effec-
37 tive date of this section.

38 § 2. Severability. If any clause, sentence, paragraph, subdivision,
39 section, or part of this act shall be adjudged by any court of competent
40 jurisdiction to be invalid, such judgment shall not affect, impair, or
41 invalidate the remainder thereof, but shall be confined in its operation
42 to the clause, sentence, paragraph, subdivision, section, or part there-
43 of directly involved in the controversy in which such judgment shall
44 have been rendered. It is hereby declared to be the intent of the legis-

45 lature that this act would have been enacted even if such invalid
46 provisions had not been included herein.
47 § 3. This act shall take effect immediately.