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# 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 an individual or entity whose business  
8 is the licensing of access to electronic literary material  
9 collections that include electronic literary material from  
10 multiple publishers.

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

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



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

3 "Electronic literary materials" means digital audiobooks or  
4 electronic books.

5 "Library" means:

6 (1) Public libraries, including elementary or secondary  
7 school libraries;

8 (2) Talking book libraries; and

9 (3) Archives.

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

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

16 "Publisher" means an individual or entity whose business is  
17 the manufacture, promulgation, license, or sale of books,  
18 audiobooks, journals, magazines, newspapers, or other literary  
19 productions including those in the form of electronic literary  
20 materials. "Publisher" includes aggregators who enter into



1 contracts with libraries for the purposes of providing materials  
2 for purchase or license from 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 item  
13 in accordance with federal law;
- 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 and if  
6 the publisher offers a license agreement to  
7 libraries for perpetual public use without the  
8 restrictions, it shall be at a price that is  
9 considered reasonable and equitable as agreed to  
10 by both parties; and
- 11 (G) Restricts or limits the library's ability to  
12 virtually recite text and display artwork of any  
13 materials to library patrons such that the  
14 materials would not have the same educational  
15 utility as when recited or displayed at a  
16 library;
- 17 (3) Restrict the library from disclosing any terms of its  
18 license agreements to other libraries; and
- 19 (4) Require, coerce, or enable the library to violate the  
20 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  
16 section -2 shall be unconscionable within the meaning of  
17 section 490:2-302 and shall be deemed unenforceable and avoid.  
18 Any attempt to waive any provisions of this chapter is contrary  
19 to public policy and shall be deemed unenforceable and void.



1           §   -4 Printed copies; prohibited. No library shall print  
2 or prepare physical copies of any electronic literary material  
3 purchased by the library."

4           SECTION 2. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10          SECTION 3. This Act shall not be applied retroactively to  
11 affect any contract in force as of the effective date of this  
12 Act that provide libraries with electronic literary products  
13 from vendors and aggregators.

14          SECTION 4. This Act shall take effect on June 30, 3000.



**Report Title:**

Libraries; Publishers; Electronic Books; Contracts; Licensing Agreements; Unfair or Deceptive Acts or Practices; Printed Copies; Prohibition; Existing Contracts

**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. Prohibits libraries from copying or printing purchased electronic literary material. Exempts existing contracts that provide libraries with electronic literary products from vendors and aggregators. Effective 6/30/3000. (SD2)

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