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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 legislature finds that public libraries  
2 serve as crucial community institutions that provide equitable  
3 access to knowledge, culture, and information. Digital  
4 resources such as electronic books (eBooks) and digital  
5 audiobooks have become essential components of library  
6 collections. However, current licensing agreements and  
7 practices often impose restrictive terms and exorbitant costs  
8 that hinder libraries' ability to fulfill their mission.

9           These challenges disproportionately impact Hawaii's public  
10 libraries, including those within the state library system and  
11 the department of education, as they strive to serve diverse  
12 communities across urban and rural areas. Many publishers  
13 charge public libraries significantly higher prices for digital  
14 literary materials compared to prices available to individual  
15 consumers and impose limitations on usage and duration of  
16 access. Such practices undermine the public's access to  
17 critical digital resources.



1           The legislature further acknowledges the advocacy of over  
2 1,000 authors and their call for fair treatment of libraries, as  
3 highlighted in the "Authors for Libraries" initiative.

4 Libraries are champions of emerging, midlist, and marginalized  
5 authors, providing avenues for discovery and ensuring the  
6 preservation of diverse voices for future generations.

7           In light of the legal precedent set in Maryland, where  
8 attempts to legislate fair digital licensing terms were  
9 challenged on the grounds of federal preemption by the Copyright  
10 Act, this Act seeks to support Hawaii's public libraries while  
11 respecting federal copyright law. Accordingly, this Act  
12 establishes reasonable terms for licensing agreements between  
13 publishers and public libraries that safeguard the libraries'  
14 rights to access and lend digital materials without contravening  
15 federal law.

16           The purpose of this Act is to ensure that Hawaii's public  
17 libraries can acquire and lend digital literary materials on  
18 reasonable terms and preserve their ability to serve as vital  
19 public resources for education and equity.



1 SECTION 2. Chapter 312, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4 "PART . DIGITAL MATERIALS

5 §312-A Definitions. As used in this part:

6 "Digital literary material" means any digital format of a  
7 published work, including electronic books and digital  
8 audiobooks.

9 "Library" means public libraries under the jurisdiction of  
10 the Hawaii state public library system and the department of  
11 education.

12 "Publisher" means an entity engaged in the production,  
13 distribution, or licensing of digital literary material.

14 "Reasonable terms" means licensing terms that do not impose  
15 undue financial or operational burdens on libraries, including:

- 16 (1) Prices comparable to those offered to individual  
17 consumers;
- 18 (2) No arbitrary restrictions on the number of loans or  
19 license duration; and
- 20 (3) Permissions for interlibrary loans.



1           §312-B Contracts between publishers and libraries. (a) No  
2 contract or license agreement between a publisher and a library  
3 shall:

4           (1) Preclude, limit, or restrict the library from  
5 performing customary operational functions, including:

- 6           (A) Licensing digital literary materials;
- 7           (B) Employing technological protection measures  
8           necessary to lend digital literary materials;
- 9           (C) Making non-public preservation copies of digital  
10           literary materials in accordance with federal  
11           law; and

- 12           (D) Lending digital literary materials through the  
13           interlibrary loan systems.

14           (2) Preclude, limit, or restrict the library from  
15 performing customary lending functions, including:

- 16           (A) Lending digital literary materials to borrowers;  
17           and
- 18           (B) Determining loan periods for digital literary  
19           materials.



- 1           (3) Require the library to acquire a license for any  
2           digital literary material at a price greater than the  
3           price charged to the public;
- 4           (4) Restrict the number of licenses for digital literary  
5           material that the library may acquire after the same  
6           digital literary material is made available to the  
7           public;
- 8           (5) Require the library to pay a cost per circulation fee  
9           to lend digital literary material, unless the total  
10          fee is less than the cost of purchasing the digital  
11          literary material;
- 12          (6) Restrict the number of loans of any digital literary  
13          material during the term of the license agreement.  
14          The publisher may offer a license agreement to the  
15          library for perpetual public use of digital literary  
16          materials without lending and duration restrictions at  
17          a price that is reasonable and equitable to both  
18          parties;
- 19          (7) Restrict or limit the library's ability to virtually  
20          recite text and display artwork of any material to  
21          library patrons in a manner that compromises the



- 1 educational utility of the material compared to the  
2 same material when recited or displayed at a library;
- 3 (8) Restrict the library from disclosing any terms of the  
4 license agreement to other libraries; or
- 5 (9) Require, coerce, or enable the library to violate any  
6 law or rule protecting the confidentiality of a  
7 borrower's library records.

8 **§312-C Offers to license digital literary materials. (a)**

9 Publishers offering digital literary materials to the public in  
10 Hawaii shall extend offers to license the same materials to  
11 libraries on reasonable terms. Licensing agreements shall not:

- 12 (1) Prohibit or restrict libraries from lending digital  
13 literary materials to borrowers;
- 14 (2) Impose pricing models significantly exceeding those  
15 available to the public for equivalent access;
- 16 (3) Restrict the duration of licenses to a period shorter  
17 than the industry standard unless agreed upon by both  
18 parties; or
- 19 (4) Limit libraries' ability to archive or preserve  
20 materials for educational and historical purposes.



1 (b) Libraries shall retain the right to determine loan  
2 periods and borrowing limits for digital literary materials,  
3 subject to fair use rules and appropriate technological  
4 safeguards.

5 §312-D **Unfair or deceptive act; remedies.** (a) An offer  
6 to license digital literary materials to a library that includes  
7 a prohibited provision listed in section 312-B or 312-C shall  
8 constitute an unfair or deceptive act or practice within the  
9 meaning of section 480-2 and shall be void and unenforceable  
10 under section 480-12. Any remedy under section 480-13 shall be  
11 available for the enforcement of this part. Actions for relief  
12 pursuant to this section may be brought by libraries, library  
13 officers, or borrowers. Parties shall be enjoined from  
14 enforcing license agreements that include a provision prohibited  
15 under sections 312-B or 312-C.

16 (b) A contract to license digital literary materials to a  
17 library that includes provisions prohibited under sections 312-B  
18 or 312-C shall be unconscionable under section 490:2-302 and  
19 shall be void and unenforceable. Any attempt to waive any  
20 provision of this part shall be contrary to public policy, void,  
21 and unenforceable."



1 SECTION 3. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7 SECTION 4. This Act shall not be applied so as to impair  
8 any contract existing as of the effective date of this Act in a  
9 manner violative of either the Constitution of the State of  
10 Hawaii or article I, section 10, of the United States  
11 Constitution.

12 SECTION 5. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15 SECTION 6. In codifying the new sections added by  
16 section 2 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 7. This Act shall take effect on July 1, 2050;  
20 provided that this Act shall apply to contracts and licensing



1 agreements entered into or renewed after the effective date of  
2 this Act.



**Report Title:**

Public Libraries; Department of Education; Digital Literary Materials; Publisher License Agreements; Prohibited Terms

**Description:**

Requires reasonable terms in license agreements for digital literary materials between libraries and publishers. Defines prohibited terms for license agreements between libraries and publishers. Declares offer of a license agreement with a prohibited term an unfair or deceptive act. Makes a license agreement with a prohibited term void and unconscionable. Creates a right of action by libraries, library officers and borrowers. Effective 7/1/2050. (SD1)

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