

JAN 17 2025

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.



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

"PART . DIGITAL MATERIALS

§312-A Definitions. As used in this part, unless the context otherwise requires:

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

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

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

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

- (1) Prices comparable to those offered to individual consumers;
- (2) No arbitrary restrictions on the number of loans or license duration; and
- (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; and

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

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

15 (A) Lending digital literary materials to borrowers;
16 and

17 (B) Determining loan periods for digital literary
18 materials.

19 (3) Require the library to acquire a license for any
20 digital literary material at a price greater than the
21 price charged to the public;



1 (4) Restrict the number of licenses for digital literary
2 material that the library may acquire after the same
3 digital literary material is made available to the
4 public;

5 (5) Require the library to pay a cost per circulation fee
6 to lend digital literary material, unless the total
7 fee is less than the cost of purchasing the digital
8 literary material;

9 (6) Restrict the number of loans of any digital literary
10 material during the term of the license agreement, or
11 restrict the duration of any license agreement. The
12 publisher may offer a license agreement to the library
13 for perpetual public use of digital literary materials
14 without lending and duration restrictions at a price
15 that is reasonable and equitable to both parties;

16 (7) Restrict or limit the library's ability to virtually
17 recite text and display artwork of any material to
18 library patrons in a manner that compromises the
19 educational utility of the material compared to the
20 same material when recited or displayed at a library;



(8) Restrict the library from disclosing any terms of the license agreement to other libraries; or

(9) Require, coerce, or enable the library to violate any law or rule protecting the confidentiality of a borrower's library records.

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

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

(1) Prohibit or restrict libraries from lending digital literary materials to borrowers;

(2) Impose pricing models significantly exceeding those available to the public for equivalent access;

(3) Restrict the duration of licenses to a period shorter than the industry standard unless agreed upon by both parties; or

(4) Limit libraries' ability to archive or preserve materials for educational and historical purposes.

(b) Libraries shall retain the right to determine loan periods and borrowing limits for digital literary materials,



1 subject to fair use rules and appropriate technological
2 safeguards.

3 **§312-D Unfair or deceptive act; remedies.** (a) An offer
4 to license digital literary materials to a library that includes
5 a prohibited provision listed in section 312-B or 312-C shall
6 constitute an unfair or deceptive act or practice within the
7 meaning of section 480-2 and shall be void and unenforceable
8 under section 480-12. Any remedy under section 480-13 shall be
9 available for the enforcement of this part. Actions for relief
10 pursuant to this section may be brought by libraries, library
11 officers, or borrowers. Parties shall be enjoined from
12 enforcing license agreements that include a provision prohibited
13 under sections 312-B or 312-C.

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

20 SECTION 3. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



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1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. In codifying the new sections added by
9 section 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

12 SECTION 6. This Act shall take effect upon its approval;
13 provided that this Act shall apply to contracts and licensing
14 agreements entered into or renewed after the effective date of
15 this Act.

16

INTRODUCED BY: 



S.B. NO. 757

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 right of action by libraries, library officers and borrowers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

