

SENATE, No. 4520

STATE OF NEW JERSEY

221st LEGISLATURE

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Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Prohibits contracts for procurement and licensing of electronic literary materials from including certain provisions.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning public library contracts for electronic literary
2 materials and supplementing chapter 73 of Title 18A of the New
3 Jersey Statutes.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. As used in this act:

9 “Aggregator” means one whose business is the licensing of
10 access to electronic literary material collections that include
11 electronic literary materials from multiple publishers.

12 “Borrower” means a person or organization, including another
13 library, to which a public library loans electronic library materials
14 to.

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

17 “Electronic book” means a published work that is in written form
18 and is released as a digital text file.

19 “Electronic literary material” means any digital audiobooks or
20 electronic books.

21 “Governing body” means a board of trustees, director or other
22 chief administrative officer, a county library commission, or board
23 of county commissioners of a public library; or a board of education
24 of a school district; or the governing board of a public institution of
25 higher education.

26 “Public library” means a library that serves, free of charge, all
27 residents of an area as established pursuant to chapter 33 or chapter
28 54 of Title 40 of the Revised Statutes, and receives financial
29 support, in whole or in part, from public funds; or a library
30 established pursuant to N.J.S.15A:1-1 et seq. and receiving public
31 funds pursuant to R.S.40:54-35; State Library; a school library; and
32 any library operated by a public institution of higher education.

33 “Publisher” means one whose business is the manufacture,
34 promulgation, license, or sale of books, audiobooks, newspapers, or
35 other literary productions, including those in the form of electronic
36 literary materials. A publisher shall include an aggregator who
37 enters into contracts with libraries for the purpose of providing
38 materials for purchase or license from a publisher.

39 “Technological protection measures” means any technology that
40 ensures the secure loaning or circulation by a public library of
41 electronic library materials.

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43 2. Notwithstanding any law, rule, or regulation to the contrary,
44 a contract or license between a publisher, distributor, and any other
45 selling or licensing electronic literary material to a public library
46 and the governing body of a public library for the procurement or
47 licensing of electronic literary materials shall not include a
48 provision which:

1 a. precludes, limits, or restricts the library from performing
2 customary operational functions, including:

- 3 (1) licensing electronic literary materials from publishers;
4 (2) employing technological protection measures necessary to
5 loan electronic literary materials;
6 (3) making non-public preservation copies of electronic literary
7 materials; and
8 (4) loaning electronic literary materials using an interlibrary loan
9 system;

10 b. precludes, limits, or restricts the library from performing
11 customary lending functions, including:

- 12 (1) loaning electronic literary materials to borrowers;
13 (2) restricting the library's right to determine loan periods for
14 licensed electronic literary materials;
15 (3) requiring the library to acquire a license for any electronic
16 literary material at a price greater than that charged to the public for
17 the same item;
18 (4) restricting the number of licenses for electronic literary
19 materials that the library may acquire after the same item is made
20 available to the public;
21 (5) requiring the library to pay a cost-per-circulation fee to loan
22 electronic literary materials, unless the cost of which is
23 substantially lower than the cost of purchasing the item outright;
24 (6) restricting the total number of times a library may loan any
25 licensed electronic literary material over the course of any license
26 agreement or restricting the duration of any license agreement,
27 unless the publisher also offers a license agreement to public
28 libraries for perpetual public use without such restrictions, at a price
29 which is considered reasonable and equitable as agreed upon by
30 both parties; and
31 (7) restricting or limiting the public library's ability to virtually
32 recite text and display artwork of any materials to library patrons
33 such that the materials would not have the same educational utility
34 as when recited or displayed at a public library facility;

35 c. restricts the public library from disclosing any terms of the
36 contract to other public libraries, the Legislature, or the Attorney
37 General; or

38 d. requires, coerces, or enables a public library to violate the
39 provisions of section 2 of P.L.1985, c.172 (C.18A:73-43.2).
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41 3. Nothing in this act shall be construed to require the
42 governing body of a public library to purchase, or otherwise
43 acquire, a library material for inclusion in its collection.
44

45 4. a. Any violation of this act shall be considered an unfair
46 method of competition and unfair and deceptive acts or practices
47 within the meaning of the New Jersey consumer fraud act,
48 P.L.1960, c.39 (C.56:8-1 et seq.).

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c. Any remedy provided pursuant to P.L.1960, c.39 (C.56:8-1 et seq.) shall be available for the enforcement of this act.

6. This act shall take effect immediately and shall first apply to contracts entered into on or after the effective date of this act.

This bill prohibits contracts for the procurement and licensing of electronic literary materials between public libraries and publishers, distributors, and any other entity selling or licensing electronic literary material to a public library from including certain provisions.

Under the bill, a contract or license between a publisher and the governing body of a public library for the procurement or licensing of electronic literary materials is not to include a provision which:

- (1) precludes, limits, or restricts the library from performing customary operational functions;
- (2) precludes, limits, or restricts the library from performing customary lending functions;
- (3) restricts the public library from disclosing any terms of the contract to other public libraries, the Legislature, or the Attorney General; or
- (4) requires, coerces, or enables a public library to violate the provision of current law which, except in certain circumstances, prohibits the disclosure of library records which contain the names or other personally identifiable details regarding the users of the libraries.

The provisions of the bill are not to apply to existing contracts, except renewal of the contract is subject to the provisions of the bill.

The bill stipulates that a violation of the provisions of the bill is to be considered an unfair method of competition and unfair and deceptive acts or practices within the meaning of the New Jersey consumer fraud act. Finally, the bill stipulates that contracts to license electronic literary materials to a public library that include prohibited provisions pursuant to this act are unconscionable and are deemed unenforceable. Any waiver of the provisions of this act is to be deemed unenforceable and void.