

Planning and Development Committee

JOINT FAVORABLE REPORT

Bill No.: HB-6800
AN ACT CONCERNING ELECTRONIC BOOK AND DIGITAL AUDIOBOOK
Title: LICENSING.
Vote Date: 3/19/2023
Vote Action: Joint Favorable Substitute
PH Date: 3/10/2023
File No.:

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SPONSORS OF BILL:

Planning and Development Committee

REASONS FOR BILL:

This bill establishes requirements for contracts between e-book and audiobook publishers and libraries (including public, school, and academic libraries). It makes a violation of these provisions a Connecticut Unfair Trade Practices Act (CUTPA) violation.

Among other things, the bill prohibits and deems unconscionable under the Uniform Commercial Code (UCC) contract terms which would:

- Limit the duration of a license, unless certain other options are offered (pay-per-use or perpetual public use on reasonable terms)
- Force disclosure of library patrons' confidential information
- Limit how many licenses a library can buy on the day electronic material becomes available to the public
- Prohibit loans and inter-library loans, nonpublic preservation copies, or disclosure of contract terms to other libraries

It specifically permits contracts to include:

- Limits on the number of simultaneous users
- Libraries to use reasonable technological protection to ensure patrons don't misuse electronic material (e.g., share it or keep it beyond the due date)

RESPONSE FROM ADMINISTRATION/AGENCY:

[Connecticut State Library, State Librarian Deborah Schander](#): Supports this bill

Our autonomy to make decisions about how to share and lend eBooks has been taken from us. To acquire an eBook or Audiobook for its collection, a library's only option is a license, offered on unsustainable and unfair terms. And Connecticut has the right as a state to say the terms of these licenses – these contracts – are unfair and discriminatory and to pass legislation which is equitable for libraries and publishers alike. It is not our desire to remove publishers from this conversation. As always, libraries will continue to pay for the materials we want. We will continue to support authors with our purchases and our recommendations. But as it currently stands, the relationship between libraries and publishers on electronic books is too far unbalanced. Publishers should not be able to continue dictating the library mission through unreasonable licensing terms.

NATURE AND SOURCES OF SUPPORT:

West Haven Library, Executive Director, Colleen Bailie:

The cost of eBooks and e-audiobooks is a disservice to our patrons, who are taxpayers in each of our communities. No one thinks that authors of materials should not be properly compensated, nor should the publishers not have a means of making a profit. But a digital book should not cost a library 2.5 times more.

Librarian in Wilton, CT, Melissa Baker:

As a librarian, I am constantly trying to balance patron demand with my limited budget. As a patron, I am furious that my hometown library in Fairfield is forced to spend my tax dollars in ways that requires them to abide by these inequitable license terms.

Wethersfield Library, Library Director Brook Berry:

As the Library Director of the Wethersfield Library, I am a very careful steward of taxpayers' money and always endeavor to use it responsibly. The pricing for libraries for "E-ANYTHING" is outlandish to say nothing of the obnoxious wait times Wethersfield taxpayers must endure in order to access a popular title. The situation has become increasingly exacerbated in these current tough economic times.

Russell Library, Director, Middletown resident Ramona A. Burkey:

In my role as a public library director in Connecticut for the past 18 years, it has been my duty to serve as a responsible steward of local tax dollars, including those spent on circulating library materials. Unfortunately, the unfair terms and astronomical pricing offered by most publishers for ebooks and digital audiobooks have made it nearly impossible to perform that aspect of my job.

Terryville Public Library, Library Director, Gretchen DelCegno:

While circulation of physical library items remains robust at our Library, over the last five years, we have also seen a 170% increase in circulation of eBooks and eAudiobooks. Our budget has not been able to keep up, increasing just 110% over the same period. CT taxpayers are being overcharged!

Scoville Memorial Library in Salisbury, CT, Director Karin Goodell:

Many of our aging patrons prefer eBooks and audiobooks because they can adjust the print size to accommodate vision problems or even listen to books when they can no longer hold a physical book because of an ailment. This is yet another way in which unfair pricing and terms create barriers to access in vulnerable populations. The sad reality is that our library, and many others like us, cannot afford to pay exorbitant prices to satisfy the demand among our users.

West Hartford resident, member of the West Hartford Library Board, Elizabeth J. Greenspan:

Our library is an essential part of our community, and it is upsetting to see library patrons getting frustrated and turning away from libraries because of this problem. I am in several book clubs who now must either choose older books or purchase books because they cannot access the books through our library.

West Hartford Public Library, Director, Coventry, CT resident Laura Irmscher:

Libraries are dedicated to free and equal access to books, but restrictions on eBook and eAudiobook licenses make it impossible for libraries to provide the same access to all users. Licensing eBooks and eAudiobooks under unreasonable terms leads to wasted taxpayer funds and hampers the ability of libraries to fulfill their missions and serve their patrons.

The Ferguson Library in Stamford, CT , CEO Alison S. Knapp:

Because of how digital books are purchased and the high costs associated with them, Stamford is not able to purchase multiple licensed copies of "best sellers". For this reason, the average wait time for popular digital books is over 40 days.

On behalf of Colchester's Cragin Memorial Library Board of Trustees, Jondahl Koonankeil:

The current situation in regard to pricing and licensing limitations of electronic books and electronic audio books has made curation of a full and diverse collection of such types of digital media all but impossible for our public libraries. We believe that access to electronic books and electronic audio books should be fair and equitable to all, including those who solely access this type of media through their public library.

Bloomfield Public Library, Director Elizabeth Lane:

We are asking you to help level the playing field for libraries of all kinds, public, school, and academic, by creating a bill that allows us to better connect people to information without all the added barriers and increased cost the publishing industry is putting up.

Enfield Public Libraries, Librarian, resident of Tolland Samantha Lee:

We are constrained by our budget and the exorbitant pricing for materials. We continue to struggle against the restrictions imposed by publishers as library patrons continue to use e-formats for their library materials. We cannot meet their needs because of these unfair licensing limitations.

Connecticut Library Association, President Douglas Lord:

Libraries are not looking to deny publishers profits, only the opportunity to negotiate a fair price on behalf of the taxpayers asked to foot the bill. Libraries are perfectly willing to pay fair prices for these products. The pricing structure that exists, however, is not fair.

Connecticut Library Association, Director, Canton Public Library & Vice-President resident of Burlington, CT, Sarah McCusker:

The current licensing system that libraries are forced to use does not allow us to develop comprehensive digital collections. Currently, ebooks for libraries are priced many times higher than their print counterparts.

Library user, Maude McGovern:

Users want ebooks and eAudiobooks with shorter wait lists and which won't disappear after two years. Please help your local librarian better serve the citizens of your towns and counties.

Blackstone Library, Director Katy McNicol:

With digital book prices for libraries being unfairly inflated, we cannot purchase as many titles as the community would like. Our taxpayers are demanding digital titles, and the unfair pricing structure means they are getting less for their money.

Durham Library, Director Christine Michaud:

Publishers are taking advantage of public libraries by charging excessive fees for digital materials and by forcing libraries to repurchase items that expire. E-book terms and pricing place an undue burden on public libraries, and consequently on Connecticut taxpayers.

Resident of Simsbury, CT, Kathleen Miller:

The high cost of digital resource licensing places an unfair burden on local taxpayers. It is unfair that libraries must pay 4-6 times more than the general public for e-books and e-audio books. It is not sustainable for our library budgets, and our taxpayers are not in position to increase the funding to the library to keep up with the exorbitant prices to maintain digital materials.

Portland Library, Library Director, Janet Nocek:

Current digital book purchasing, and leasing terms are very concerning. The cost to libraries is much higher per item than the market price. Many popular items have an expiration date

on them and/or have a limit to the number of times an item may be used. This amounts to very short life span for a costly item.

Resident of Avon, CT, Nicole Nunziata:

It is outrageous that publishing companies hold library budgets and services hostage with unfair pricing and terms. Libraries cannot support purchasing electronic books that expires and disappear after a set time period or that have strict limits on the number of times they can be lent.

CT Library Consortium, Executive Director Ellen Paul:

Libraries regularly pay up to six times the consumer cost for a license to lend an eBook or digital audio book. Then, that license likely expires after two years or twenty-six borrows. If the library would like to continue to lend that title, they must repurchase the licenses at the same inflated price. Libraries across the State spend State, Federal and municipal dollars on eBooks. The State absolutely has the purview and an interest in regulating these contracts to ensure that those tax dollars are spent responsibly.

West Hartford Public Library, Patron, Cathy Puleo:

Libraries do not have the ability to negotiate for favorable terms like they can with contracts for print books. Digital materials are more accessible for people who need large print and people with dyslexia and other print disabilities. As a library user and a taxpayer, I want more ebooks and eAudiobooks with shorter hold lists.

Hartford Public Library, President and Chief Executive Officer, Bridget Quinn:

When publishers decide libraries cannot purchase some books or make the cost prohibitively high, only people who can afford to pay for a book will have access to the content. This goes against all library values and creates an unjust and inequitable society. The current model for acquiring eBooks has significant cost implications for library budgets, and therefore for taxpayers.

University of Hartford, Librarian, Resident of Bolton, CT, Lisa Read:

HB 6800 is a crucial step in fighting for fair business practices, responsible use of taxpayer dollars, and equitable information access for everyone in this state.

In addition to my work as a librarian, I am also an avid user of the Bentley Memorial Library in Bolton. I know first-hand the effects that predatory licensing practices have on the citizens of this state. When I try to access e-books and audiobooks from my public library, the ones I want are almost always unavailable. I have had to wait weeks and even months before a specific book becomes available.

Ampersand Therapy, Jennifer Schaefer:

As a therapist, I frequently recommend books to clients. The added benefit of privacy is what I consider the most important aspect of using this technology. There are no physical barriers to borrow digital materials, so clients with transportation or mobility challenges have equal

access. Audiobooks are incredibly helpful to those with vision impairments and those with reading disabilities. One of the great frustrations I run into is the lack of available titles. Clients and I frequently run into trouble finding ebooks and audiobooks in library collections. With limited licenses, waiting lists can be extensive if the title is available at all.

Librarian and resident of Middletown, Olivia Scully:

I cannot tell you the number of times I've heard from patrons expressing abject frustration with the current state of digital borrowing. See written testimony for personal story details that promote the support of this bill.

Stratford Library, Head of IT, Resident of Trumbull, CT, Kate Sheehan:

Ebooks are going to continue to be popular and libraries need a sustainable and equitable way to buy them We need your help to meet the needs of our patrons. The current terms are unfair to libraries, authors, readers, and all Connecticut taxpayers.

Stonington Free Library, Assistant Director, Karla Umland:

The pricing of ebooks needs to be reined in so that public libraries can provide the materials that the community needs. A few examples from Stonington, CT are detailed in the written testimony.

Easton Public Library, Director Lynn Zaffino:

With the unreasonably high prices that libraries are forced to pay for digital materials, Easton's small budget doesn't go very far. Leases often run out while materials are still in demand and then need to be repurchased. This bill would lessen the financial burden on Easton's library.

NATURE AND SOURCES OF OPPOSITION:

Association of American Publishers (AAP), Sr. V.P., Government Affairs Shelley H. Husband:

In the face of challenging economic times, the success of authors depends on the success of publishing houses and the incredibly important commercial markets they support. HB 6800 seeks to unconstitutionally intervene and disrupt the balance between art and commerce that it has so carefully struck.

Copywrite Alliance, CEO Keith Kupferschmid:

The individual creators and organizations that we represent—including the many creators who hail from the great state of Connecticut—rely on a strong federal copyright system to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. The strength of our copyright system relies in large part on the uniformity of copyright laws across the United States, guaranteed by both the Supremacy Clause of the U.S. Constitution, and by the Copyright Act. HB 6800 undermines

that important legal system and threatens the ability of authors and publishers to create and disseminate books to the public.

[The Authors Guild, CEO, Mary Rasenberger:](#)

Raised Bill 6800's compulsory license not only threatens the existing copyright system, but it encumbers the freedom of expression of authors and their publishers. Authors' rights under copyright, which the U.S. Supreme Court has called the "engine of free expression," is directly related to their constitutional rights to free speech and expression. By mandating terms for commercial dealing—under penalty of law—the bill impinges upon these core constitutional guarantees.

[Independent Book Publishers Association, Advocacy Committee Andrea Fleck-Nisbet, CEO & Kurt Brackob:](#)

While many independent publishers have strong relationships with and license their works to libraries, HB6800 would require that they offer licenses on "reasonable terms" to libraries in Connecticut. This would create an undue burden on small publishers across the nation who simply do not have the resources or sophistication to manage licensing at scale on a state-by-state basis. The legislation makes no distinction between large publishers and distributors, such as Amazon, and small independent publishers and author-publishers. All these publishers would be subject to potential violations of Connecticut law on unfair, abusive, or deceptive trade practice laws if they do not "offer to license" their electronic publications to libraries.

[Linda Holden:](#)

See written testimony which includes several suggestions for added or substitute language that would gain Linda's support on this bill.

[Deb Coelho:](#)

I strongly oppose this legislation.

Reported by: Robert Mayne

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