

**HOUSE . . . . . No. 3239**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Ruth B. Balsler***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act empowering library access to electronic books and digital audiobooks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/20/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/27/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/17/2023</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>3/8/2023</i>

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By Representative Balser of Newton, a petition (accompanied by bill, House, No. 3239) of Ruth B. Balser and others relative to authorizing library access to electronic books and digital audiobooks. Tourism, Arts and Cultural Development.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
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An Act empowering library access to electronic books and digital audiobooks.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 78 of the General Laws is hereby amended by adding the following section:

2 SECTION 35. An Act empowering library access to electronic books and digital  
3 audiobooks.

4 A. Definitions

5 For purposes of this act, the following terms mean:

6 (1) “Digital audiobook” means a published work that is in the form of a voice recording  
7 (narrated) and is released as a digital audio file;

8 (2) “Electronic book” means a published work that is in written form and is released as a  
9 digital text file;

10 (3) "Electronic literary materials" means digital audiobooks and/or electronic books;

11

12 (4) "Libraries" include:

13 (A) public libraries;

14 (B) public elementary school or secondary school libraries;

15 (C) tribal libraries;

16 (D) academic libraries;

17 (E) research libraries;

18 (F) special libraries

19 (G) talking book libraries; and

20 (H) archives;

21 (5) "Publisher" means one whose business is the manufacture, promulgation, license,

22 and/or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions

23 including those in the form of electronic literary materials. For the purposes of this bill the term

24 'publisher' shall also include aggregators who enter into contracts with libraries for the purposes

25 of providing materials for purchase or license from the publishers;

26 (6) "Aggregator" means one whose business is the licensing of access to electronic

27 literary material collections that include electronic literary material from multiple publishers;

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29 (7) “Literary monograph” means a literary work that is published in one volume or a  
30 finite number of volumes;

31 (8) “Technological protection measures” means any technology that ensures the secure  
32 loaning and/or circulation by a library of electronic literary materials;

33 (9) “Borrower” means a person or organization, including another library, to whom the  
34 library loans electronic literary materials of any sort;

35 (10) “Virtually” means transmitted to receiving parties via the Internet in such a way that  
36 the transmission appears in front of the receiving parties on a computer, tablet, smart phone, or  
37 electronic device;

38 (11) “Loan” means create and transmit to a borrower a copy of electronic literary  
39 material and delete it at the end of the loan period;

40 (12) “Loan period” means the time between the transmission of electronic literary  
41 material to a borrower and the copies’ deletion, as determined by any individual library.

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#### 43 B. Contracts Between Libraries and Publishers

44 (a) Any contract offered by a publisher to a library for the purposes of licensing  
45 electronic literary materials to the public in this state is governed by Massachusetts law.

46 (b) A contract between a library and a publisher shall contain no provision that:

47 (1) Precludes, limits, or restricts the library from performing customary operational  
48 functions, including any provision that:

49 (A) Precludes, limits, or restricts the library from licensing electronic literary materials  
50 from publishers;

51 (B) Precludes, limits, or restricts the library's ability to employ technological protection  
52 measures as is necessary to loan the electronic literary materials;

53 (C) Precludes, limits, or restricts the library's right to make non-public preservation  
54 copies of the electronic literary materials;

55 (D) Precludes, limits, or restricts the library's right to loan electronic literary materials  
56 via interlibrary loan systems; or

57 (2) Precludes, limits, or restricts the library from performing customary lending  
58 functions, including any provision that:

59 (A) Precludes, limits, or restricts the library from loaning electronic literary materials to  
60 borrowers;

61 (B) Restricts the library's right to determine loan periods for licensed electronic literary  
62 materials;

63 (C) Requires the library to acquire a license for any electronic literary material at a price  
64 greater than that charged to the public for the same item;

65 (D) Restricts the number of licenses for electronic literary materials that the library may  
66 acquire after the same item is made available to the public;

67 (E) Requires the library to pay a cost-per-circulation fee to loan electronic literary  
68 materials, unless substantially lower in aggregate than the cost of purchasing the item outright;

69 (F) Restricts the total number of times a library may loan any licensed electronic literary  
70 materials over the course of any license agreement, or restricts the duration of any license  
71 agreement; unless the publisher also offers a license agreement to libraries for perpetual public  
72 use without such restrictions; at a price which is considered reasonable and equitable as agreed to  
73 by both parties

74 (G) Restricts or limits the library's ability to virtually recite text and display artwork of  
75 any materials to library patrons such that the materials would not have the same educational  
76 utility as when recited or displayed at a library facility;

77 (3) Restricts the library from disclosing any terms of its license agreements to other  
78 libraries.

79 (4) Requires, coerces, or enables the library to violate the law protecting the  
80 confidentiality of a patron's library records found in Chapter 78, Section 7.

### 81 C. Remedies

#### 82 (A) Unfair and Deceptive Practices

83 (1) Offers to license electronic literary materials that include a prohibited provision listed  
84 in Section 3 constitute unfair and deceptive practices within the meaning of Section 2 of Chapter  
85 93A, Regulation of Business Practices for Consumer Protection, and any remedy provided  
86 pursuant to Chapter 93A shall be available for the enforcement of this act.

87 (2) Actions for relief pursuant to this act may be brought by libraries, library officers, or  
88 borrowers.

89 (3) Parties shall be enjoined by the courts from enforcing license agreements that include  
90 a prohibited provision listed in Section 3.

91 (B) Unconscionability

92 (1) Contracts to license electronic literary materials that include prohibited provisions  
93 listed in Section 3 of this chapter are unconscionable within the meaning of Chapter 106, Section  
94 2-302 in violation of Massachusetts public policy and are deemed unenforceable and void. Any  
95 waiver of the provisions of this title is contrary to public policy and shall be deemed  
96 unenforceable and void.

97 (C) Any publisher that violates this title shall be subject to an injunction and liable for a  
98 civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation or  
99 seven thousand five hundred dollars (\$7,500) for each intentional violation, which shall be  
100 imposed by the court.

101 D. Severability

102 The provisions of this act are severable. If any provision of this act or its application is  
103 held invalid, that invalidity shall not affect other provisions or applications that can be given  
104 effect without the invalid provision or application.

105 E. Existing Contracts

106 Nothing in this subsection affects existing contracts that are currently in force providing  
107 libraries with electronic literary products from vendors and aggregators.

108 F. Effective Date

109            This act shall take effect upon its enactment into law unless otherwise specified. The  
110 provisions of this act apply to transactions entered into and events occurring after such date.