

HOUSE No. 4802

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 27, 2024.

The committee on Tourism, Arts and Cultural Development, to whom was referred the petition (accompanied by bill, House, No. 3239) of Ruth B. Balser and others relative to authorizing library access to electronic books and digital audiobooks, reports recommending that the accompanying bill (House, No. 4802) ought to pass.

For the committee,

MINDY DOMB.

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act addressing challenges facing public libraries and digital resource collections.

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

1 SECTION 1. The general court finds and declares that:

2 (i) libraries serve the public good, and all citizens of the commonwealth stand to gain
3 from the services rendered and the materials contained within library collections;

4 (ii) the general court has a historic responsibility in supporting public libraries and the
5 public’s access to free access to diverse resources to everyone, as it did in 1848 by establishing
6 the Boston public library as the first large free municipal library in the United States; and

7 (iii) the evolution of resource production and publishing and the advent of technology has
8 changed the way consumers and libraries source and use materials, and in order to serve the
9 public good, libraries increasingly use digital and electronic materials and technology.

10 SECTION 2. Chapter 78 of the General Laws is hereby amended by adding the following
11 section:-

12 Section 35. (a) A contract between a library and a publisher shall contain no provision
13 that:

14 (i) restricts the library from disclosing any terms of its license agreements to other
15 libraries, the legislature, the attorney general, or the board of library commissioners; or

16 (ii) requires, coerces or enables the library to violate the confidentiality of a patron's
17 library records, pursuant to section 7.

18 (b) A contract between a publisher and library to license electronic literary materials that
19 includes a provision that violates this section shall constitute an unfair and deceptive practice
20 under section 2 of chapter 93A. Any remedy provided pursuant to said chapter 93A shall be
21 available for the enforcement of this section.

22 SECTION 3. As used in sections 1 through 4, inclusive, the following words shall, unless
23 the context otherwise requires, have the following meanings:

24 "Access", any proper means by which a person may read or use digital resources, print
25 materials, records and other information held by a library.

26 "Digital resources", any books, textbooks, workbooks, videos, databases, newspapers,
27 magazines, periodicals, charts, graphs, movies, games, maps, interactive applications, software
28 and other such enrichment or entertainment materials in any electronic format, inclusive of
29 fiction and nonfiction.

30 "Print materials", primarily paper-based materials found in physical or hard-copy format,
31 inclusive of fiction and nonfiction.

32 SECTION 4. (a) There shall be established, pursuant to section 2A of chapter 4 of the
33 General Laws, a special legislative commission to be known as the special commission to assess
34 and address challenges facing public libraries and digital resource collections.

35 (b) The commission shall: (i) study the cost trends and expenditures of the
36 commonwealth's public, school and research libraries as it relates to digital resources and their
37 overall collections; (ii) study consumer use of, and satisfaction with, digital resources; (iii)
38 research the opinions of legal experts and scholars as it relates to the differences between
39 existing licensing for digital resources and the use of print materials and how these differences
40 may impact consumer experience and access to diverse collections; (iv) research and describe
41 how patron privacy records and metadata are kept, used, accessed and sold as it relates to patrons
42 using and accessing digital and electronic resources through a public library, make
43 recommendations addressing the security and privacy of data related to digital resources, if
44 needed; (v) identify and describe concerns, if any, regarding consumer protection and access
45 issues that emerge surrounding digital collections; (vi) investigate and summarize the actions of
46 other states in addressing digital collection creation; (vii) examine the impact of licensed
47 electronic literary resources on library users; and (viii) recommend legislative and executive
48 action to: (A) support the sustainability of diverse digital and electronic resource collections in
49 the commonwealth's public libraries, (B) better support its residents to access diverse digital and
50 electronic resources, (C) uphold the historic responsibility of the commonwealth's libraries to
51 making public lending available to all residents and meet their mission in an increasingly digital
52 world, and (D) protect data related to readers use of resources.

53 (c) The commission shall consist of the following members: 2 members of the house of
54 representatives, 1 of whom shall be named a co-chair of the commission, appointed by the

55 speaker of the house; 2 members of the senate, 1 of whom shall be named a co-chair of the
56 commission, appointed by the senate president; the executive director of the board of library
57 commissioners, or a designee; the president of the Massachusetts Library Association, or a
58 designee; the president of the Massachusetts School Library Association, or a designee; the
59 president of the Boston public library, or a designee; the executive director of the Massachusetts
60 Center for the Book, or a designee; the attorney general, or a designee; 7 members who shall be
61 appointed by the governor, 1 of whom shall be the Director of the Massachusetts Office on
62 Disability or a designee, 1 of whom shall be a research librarian from a public tier 1 research
63 institution of higher education, 1 of whom shall be a representative of the Association of
64 American Publishers, 1 of whom shall be a representative of a digital distributor of ebooks, such
65 as Overdrive, Inc., 1 of whom shall be an expert in the field of intellectual property or copyright
66 law, and 1 of whom shall be an expert in consumer protection laws in the commonwealth.

67 (d) The chairs shall direct the schedule and work of the commission. A simple majority
68 vote of the commission members present may be requested for any actions of the commission
69 and all members of the commission shall have a vote. The chairs may create subgroups to focus
70 on specific responsibilities of the commission. The chairs may invite guests to participate in
71 meetings as speakers.

72 (e) The commission may seek assistance from outside experts at the discretion of the
73 chairs. The commission may use consulting and research firms in the course of its study, subject
74 to appropriation.

75 (f) No later than October 15, 2025, the commission shall submit a report with its findings
76 and any recommendations to the clerks of the house of representatives and senate, the governor,
77 and the attorney general.