

HOUSE BILL 2737

By Hemmer

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, relative to library electronic book
contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding
the following as a new part:

47-18-3401. Definitions.

As used in this part:

(1) "Aggregator" means a person whose business is the licensing of
access to electronic literary material collections that include electronic literary
material from multiple publishers;

(2) "Borrower" means an individual or organization, including another
library, to whom the library loans electronic literary materials;

(3) "Digital audiobook" means a published work that is in the form of a
voice recording narration and is released as a digital audio file;

(4) "Electronic book" means a published work that is in written form and
is released as a digital text file;

(5) "Electronic literary materials" means digital audiobooks or electronic
books;

(6) "Library" means any:

(A) Public library;

(B) Public elementary school or secondary school library;

(C) Tribal library;

- (D) Academic library;
- (E) Research library;
- (F) Special library;
- (G) Consortium library system;
- (H) Talking book library; or
- (I) Archive;

(7) "Literary monograph" means a literary work that is published in one (1) or more volume;

(8) "Loan period" means the time between the transmission of electronic literary material to a borrower and the copy's deletion, as determined by a library;

(9) "Loan" means the creation and transmission to a borrower of a copy of electronic literary material, and deletion of the borrower's copy at the end of the loan period;

(10) "Portable electronic device" means a self-contained electronic device for personal use for communicating, reading, viewing, listening, playing video games, or computing, including a mobile telephone, tablet computer, electronic book reader, or another similar device;

(11) "Publisher":

(A) Means a person whose business is the manufacture, promulgation, license, or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions including those in the form of electronic literary materials; and

(B) Includes an aggregator who enters into a contract with a library to provide materials for purchase or license from the publishers;

(12) "Reasonable terms" means purchase or licensing specifications in a contract or license agreement between a publisher and a library that consider the publisher's business model, as well as the library's need to continue its mission to provide access to materials and the efficient use of funds in providing library services;

(13) "Technological protection measures" means any technology that ensures the secure loaning or circulation by a library of electronic literary materials; and

(14) "Virtually" means transmission to a receiving party via the internet in such a way that the transmission appears in front of the receiving party on a computer, tablet, smart phone, or electronic device.

47-18-3402. Contracts between libraries and publishers.

(a) A contract between a publisher and a library to license electronic literary materials to the public in this state is governed by the law of this state.

(b) A contract or license agreement between a publisher and a library in this state must not:

(1) Preclude, limit, or restrict the library from performing customary operational functions, including a provision that precludes, limits, or restricts:

(A) The library from licensing electronic literary materials from a publisher;

(B) The library's ability to employ technological protection measures as is necessary to loan electronic literary materials;

(C) The library's right to make nonpublic preservation copies of the electronic literary materials; or

(D) The library's right to loan electronic literary materials via interlibrary loan systems; or

(2) Preclude, limit, or restrict the library from performing customary lending functions, including a provision that:

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

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

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

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

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

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

(G) Restricts or limits the library's ability to virtually recite text and display artwork of any materials to library patrons such that the materials

would not have the same educational utility as when recited or displayed at a library facility;

(3) Restrict the library from disclosing any terms of its license agreements to other libraries; or

(4) Require, coerce, or enable the library to violate the requirements related to confidentiality of a patron's library records under § 10-8-102.

47-18-3403. Remedies.

(a)

(1) A publisher's violation of § 47-18-3402(b) constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. A violation constitutes an unfair or deceptive act or practice affecting trade or commerce and is subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act of 1977, in addition to the penalties and remedies in this part.

(2) In addition to the penalties and remedies provided under the Tennessee Consumer Protection Act of 1977, the attorney general and reporter may seek a civil penalty for a violation of not more than five thousand dollars (\$5,000).

(3) Court costs and litigation costs related to an action brought pursuant to this section must not be taxed against the state.

(b)

(1) In addition to enforcement by the attorney general, a library, employee of a library, or borrower who uses a library's services may bring an action in the chancery or circuit court of Davidson County or in a court of competent jurisdiction.

(2) If a court finds that a person or organization has violated this part, then the court must award to the prevailing plaintiff:

(A) Ten thousand dollars (\$10,000), or five thousand dollars (\$5,000) for each day of an ongoing violation, whichever is greater; and

(B) Reasonable court costs, including reasonable attorneys' fees.

(c) A contract or other agreement between a publisher and a library that includes a provision prohibited under § 47-18-3402(b) is void and unenforceable. A contract or other agreement between a publisher and a library must not waive the requirements of § 47-18-3402(b), and any such contract or agreement that purports to waive the requirements is void and unenforceable.

47-18-3404. Applicability.

This part does not affect existing contracts that provide libraries with electronic literary products from publishers or aggregators until such contracts are renewed or amended.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect July 1, 2024, the public welfare requiring it.