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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
UNFAIR SALES PRACTICES

Introduced By: Senators Gu, Lawson, McKenney, DiPalma, and Bissaillon

Date Introduced: March 01, 2024

Referred To: Senate Education

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 6-13 of the General Laws entitled "Unfair Sales Practices" is hereby
2 amended by adding thereto the following section:

3 **6-13-22. Ebook contracts between libraries and publishers.**

4 (a) Definitions.

5 For purposes of this section:

6 (1) "Aggregator" means one whose business is the licensing of access to electronic literary
7 material collections that include electronic literary material from multiple publishers.

8 (2) "Borrower" means a person or organization, including another library, to whom the
9 library loans electronic literary materials of any sort.

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

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

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

15 (6) "Libraries" include:

16 (i) Public libraries;

17 (ii) Public elementary school or secondary school libraries;

18 (iii) Tribal libraries;

1 (iv) Academic libraries;

2 (v) Research libraries;

3 (vi) Special libraries;

4 (vii) Consortial library systems;

5 (viii) Talking book libraries; and

6 (ix) Archives.

7 (7) "Literary monograph" means a literary work that is published in one volume or a finite
8 number of volumes.

9 (8) "Loan" means create and transmit to a borrower a copy of electronic literary material
10 and delete it at the end of the loan period.

11 (9) "Loan period" means the time between the transmission of electronic literary material
12 to a borrower and the copies' deletion, as determined by any individual library.

13 (10) "Portable electronic device" means any self-contained electronic device for personal
14 use for communicating, reading, viewing, listening, playing video games, or computing, including,
15 but not limited to, a mobile telephone, tablet computer, electronic book reader, and other similar
16 devices.

17 (11) "Publisher" means one whose business is the manufacture, promulgation, license,
18 and/or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions
19 including those in the form of electronic literary materials. For the purposes of this section, the term
20 "publisher" shall also include aggregators who enter into contracts with libraries for the purposes
21 of providing materials for purchase or license from the publishers.

22 (12) "Reasonable terms" means purchase or licensing specifications provided in subsection
23 (b)(2) of this section that consider a publisher's business model as well as a library's need to
24 continue its mission to provide access to materials and the efficient use of funds in providing library
25 services.

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

28 (14) "Virtually" means transmitted to receiving parties via the Internet in such a way that
29 the transmission appears in front of the receiving parties on a computer, tablet, smart phone, or
30 electronic device.

31 (b) Contracts between libraries and publishers.

32 (1) Any contract between a publisher and a library to license electronic literary materials
33 to the public in this state is governed by Rhode Island law.

34 (2) No contract or license agreement between any publisher and any library entered into

1 shall:

2 (i) Preclude, limit, or restrict the library from performing customary operational functions,

3 including any provision that:

4 (A) Preclude, limit, or restrict the library from licensing electronic literary materials from

5 publishers;

6 (B) Preclude, limit, or restrict the library's ability to employ technological protection

7 measures as is necessary to loan electronic literary materials;

8 (C) Preclude, limit, or restrict the library's right to make non-public preservation copies of

9 the electronic literary materials;

10 (D) Preclude, limit, or restrict the library's right to loan electronic literary materials via

11 interlibrary loan systems.

12 (ii) Preclude, limit, or restrict the library from performing customary lending functions,

13 including any provision that:

14 (A) Preclude, limit, or restrict the library from loaning electronic literary materials to

15 borrowers;

16 (B) Restrict the library's right to determine loan periods for licensed electronic literary

17 materials;

18 (C) Require the library to acquire a license for any electronic literary material at a price

19 greater than that charged to the public for the same item;

20 (D) Restrict the number of licenses for electronic literary materials that the library may

21 acquire after the same item is made available to the public;

22 (E) Require the library to pay a cost-per-circulation fee to loan electronic literary materials,

23 unless substantially lower in aggregate than the cost of purchasing the item outright;

24 (F) Restrict the total number of times a library may loan any licensed electronic literary

25 materials over the course of any license agreement, or restricts the duration of any license

26 agreement; unless the publisher also offers a license agreement to libraries for perpetual public use

27 without such restrictions, at a price which is considered reasonable and equitable as agreed to by

28 both parties;

29 (G) Restrict or limits the library's ability to virtually recite text and display artwork of any

30 materials to library patrons such that the materials would not have the same educational utility as

31 when recited or displayed at a library facility.

32 (iii) Restrict the library from disclosing any terms of its license agreements to other

33 libraries.

34 (iv) Require, coerce, or enable the library to violate the law protecting the confidentiality

1 of a patron's library records found in § 11-18-32.

2 (c) Remedies - Unfair and deceptive acts or practices.

3 (1) Offers to license electronic literary materials to a library that include a prohibited
4 provision listed in subsection (b)(2) of this section constitute unfair methods of competition and
5 unfair or deceptive acts or practices within the meaning of § 6-13.1-2.

6 (2) Any remedy provided pursuant to §§ 6-13.1-8 and 6- 13.1-14 shall be available for the
7 enforcement of this section.

8 (3) Actions for relief pursuant to this section may be brought by libraries, library officers,
9 or borrowers or, pursuant to § 6-13-6, may be brought by the attorney general.

10 (4) Parties shall be enjoined from enforcing license agreements that include a prohibited
11 provision listed in subsection (b)(2) of this section.

12 (d) Unconscionability.

13 (1) Contracts to license electronic literary materials to a library that include prohibited
14 provisions listed in subsection (b)(2) of this section are unconscionable within the meaning of §
15 6A-2-302 in violation of Rhode Island law and public policy and are deemed unenforceable. Any
16 waiver of the provisions of this title is contrary to public policy and shall be deemed unenforceable
17 and void.

18 (e) Severability. The provisions of this act are severable. If any provision of this act or its
19 application is held invalid, that invalidity shall not affect other provisions or applications that can
20 be given effect without the invalid provision or application.

21 (f) Existing contracts. Nothing in this section affects existing contracts that are currently in
22 force providing libraries with electronic literary products from vendors and aggregators.

23 SECTION 2. This act shall take effect upon passage and shall apply to transactions entered
24 into and events occurring after such date.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
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- 1 This act would provide for the legal governance of licensed electronic literacy materials.
- 2 This act would take effect upon passage and would apply to transactions entered into and
- 3 events occurring after such date.

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