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LRB104 18368 SPS 36522 a

1 AMENDMENT TO HOUSE BILL 5236

2 AMENDMENT NO. _____. Amend House Bill 5236 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Digital Library Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Aggregator" means any person in the business of licensing
8 access to electronic literary material collections that
9 include electronic literary material from multiple publishers.

10 "Borrower" means any person or organization, including
11 another library, to whom a library loans a copy of electronic
12 literary material.

13 "Digital audiobook" means a sound recording of a reading
14 of any literary production that has been converted into or
15 published in a digital audio file that may be listened to on a
16 computer or portable electronic device.

1 "Electronic literary material" means any digital audiobook
2 or electronic book.

3 "Electronic book" means a text document that has been
4 converted into or published in a digital format that may be
5 read on a computer or portable electronic device.

6 "Library" means a public library, public elementary school
7 or secondary school library, academic library, research
8 library, special library, library consortium, talking book
9 library, or an archive.

10 "Loan" means the creation and transmission by a library to
11 a borrower of a copy of any electronic literary material and
12 the deletion of the copy by the library upon the expiration of
13 the loan period.

14 "Loan period" means the period of time commencing with the
15 creation and transmission by a library to a borrower of a copy
16 of any electronic literary material and concluding with the
17 deletion of the copy by the library, as determined by the
18 library.

19 "Publisher" means (i) any person in the business of the
20 manufacture, distribution, licensing, or sale of books,
21 audiobooks, journals, magazines, newspapers, or other literary
22 productions, including electronic literary materials, and (ii)
23 any aggregator who enters into a contract with any library for
24 the purpose of providing materials for purchase or license
25 from any publisher.

26 "Technological protection measure" means any technology

1 that enhances the security of loaning or circulating
2 electronic literary materials by a library.

3 Section 10. Contracts between libraries and publishers. No
4 publisher shall enter into a contract or license agreement to
5 distribute electronic literary materials to a library if the
6 contract or agreement:

7 (1) restricts the library from performing customary
8 operational functions, including any provision that:

9 (A) restricts the library from licensing
10 electronic literary materials from publishers;

11 (B) restricts the library from employing
12 technological protection measures as necessary to loan
13 electronic literary materials;

14 (C) restricts the library from making preservation
15 copies of electronic literary materials; or

16 (D) restricts the library from loaning electronic
17 literary materials through interlibrary loan systems;

18 (2) restricts the library from performing customary
19 lending functions, including any provision that:

20 (A) restricts the library from loaning electronic
21 literary materials to borrowers;

22 (B) restricts the library from determining loan
23 periods for licensed electronic literary materials;

24 (C) requires the library to acquire a license for
25 any electronic literary material at a price greater

1 than that charged to the public for the same item;

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

6 (E) requires the library to pay a
7 cost-per-circulation fee to loan electronic literary
8 materials, unless the fee is substantially lower in
9 aggregate than the cost of purchasing the item
10 outright;

11 (F) restricts the number of times the library may
12 loan any electronic literary material over the course
13 of the contract or license agreement if the contract
14 or agreement also imposes a time-based limitation on
15 the duration of the library's license to the
16 materials; or

17 (G) restricts or limits the library's ability to
18 virtually recite text or display artwork to library
19 patrons so that the materials would not have the same
20 educational utility as when recited or displayed at a
21 library facility;

22 (3) restricts the library from disclosing the terms of
23 the contract or license agreement to any other library in
24 this State; or

25 (4) requires, coerces, or enables the library to
26 violate the Library Records Confidentiality Act.

1 Section 12. Applicability; governing law; forum.

2 (a) This Act applies to any contract or license agreement
3 to distribute electronic literary materials to:

4 (1) a library located in this State; or

5 (2) a library consortium acting on behalf of one or
6 more libraries located in this State.

7 (b) A contract or license agreement subject to this Act,
8 and any dispute arising out of or relating to the contract or
9 license agreement, is governed by and shall be construed in
10 accordance with the laws of this State, without regard to
11 conflict of laws principles.

12 (c) A provision in a contract or license agreement subject
13 to this Act that requires the application of the law of another
14 jurisdiction or requires a library to bring or defend an
15 action in a forum outside this State is contrary to the public
16 policy of this State and is unenforceable and void.

17 (d) This Section does not apply to any existing contract
18 described in Section 25.

19 Section 15. Enforcement.

20 (a) A violation of this Act constitutes an unlawful
21 practice under the Consumer Fraud and Deceptive Business
22 Practices Act. All remedies, penalties, and authority granted
23 to the Attorney General by the Consumer Fraud and Deceptive
24 Business Practices Act shall be available to the Attorney

1 General for the enforcement of this Act.

2 (b) In addition to the authority granted to the Attorney
3 General under subsection (a), a library, library consortium,
4 or library officer acting within the scope of the officer's
5 official duties on behalf of a library or library consortium
6 may bring an action for declaratory or injunctive relief to
7 enforce this Act. In an action brought under this subsection,
8 the court may enjoin the inclusion, enforcement, or attempted
9 enforcement of any provision prohibited by this Act and may
10 declare any prohibited provision, contract, or waiver void and
11 unenforceable as provided in Section 20.

12 Section 20. Unenforceable contracts. Any contract to
13 license electronic literary materials to a library is deemed
14 unenforceable and void if the contract includes a provision
15 prohibited under this Act. Any provision of a contract that
16 waives any of the provisions of this Act is deemed
17 unenforceable and void.

18 Section 25. Existing contracts. Nothing in this Act shall
19 be construed to apply to any contract to distribute electronic
20 literary materials to a library entered into prior to the
21 effective date of this Act.

22 Section 30. Relation to other laws. Nothing in this Act
23 shall be construed to limit the authority of the Secretary of

1 State under the License to Read Act.

2 Section 35. The Consumer Fraud and Deceptive Business
3 Practices Act is amended by adding Section 2MMMM as follows:

4 (815 ILCS 505/2MMMM new)

5 Sec. 2MMMM. Violations of the Digital Library Protection
6 Act. Any person who violates the Digital Library Protection
7 Act commits an unlawful practice within the meaning of this
8 Act.

9 Section 97. Severability. The provisions of this Act are
10 severable under Section 1.31 of the Statute on Statutes. If
11 any provision of this Act or its application to any person or
12 circumstance is held invalid, that invalidity does not affect
13 any other provision or application of this Act that can be
14 given effect without the invalid provision or application.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law."