

1 S.220

2 Introduced by Senators Hardy, Gulick, Clarkson, Harrison, Perchlik, Watson,
3 White and Wrenner

4 Referred to Committee on

5 Date:

6 Subject: Libraries, history, and information technology; libraries;
7 miscellaneous amendments

8 Statement of purpose of bill as introduced: This bill proposes to establish
9 unenforceable contract provisions for the licensing of electronic literary
10 products, require public libraries to adopt policies governing the selection and
11 reconsideration of library materials, amend the provisions governing the
12 confidentiality of library records for library users over 12 years of age, create
13 the positions of School Library Consultant within the Agency of Education and
14 Library Consultants within the Department of Libraries, authorize the
15 Department of Libraries to issue Certificates of Public Librarianship based on a
16 program of continuing education, incorporate public libraries into the public
17 safety statutes governing schools and school property, amend the governance
18 structures and funding of public libraries, require the State Librarian and Board
19 of Libraries to adopt rules governing the minimum standards for public
20 libraries, and appropriate monies for various public library services and the
21 accessibility of library facilities and materials.

1 An act relating to Vermont's public libraries

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 * * * Findings and Intent * * *

4 Sec. 1. FINDINGS AND INTENT

5 (a) Findings. The General Assembly finds that:

6 (1) Vermont's libraries are essential to the enlightenment and education
7 of Vermont's citizens;

8 (2) it is vital that Vermont's citizens have meaningful access to free
9 public libraries, library resources, and library materials, including electronic
10 literary products, and access to these materials should not be unduly limited or
11 restricted;

12 (3) it is also vital that Vermont's primary and secondary education
13 students have meaningful access to well-supported and staffed school libraries
14 and age-appropriate school library resources and materials, including
15 electronic literary products, and access to these materials should not be unduly
16 limited or restricted;

17 (4) Vermont's academic and institutional libraries play a crucial role in
18 sustaining academic freedom and providing access to academic and specialized
19 library collections and services to Vermont college and graduate students,
20 academics, historians, and others;

1 (5) the State of Vermont values its diverse citizenry and believes that all
2 citizens should have equal access to library resources and services without
3 discrimination;

4 (6) in upholding the principles of the First Amendment to the U.S.
5 Constitution, libraries serve as guardians of citizens' rights to receive and
6 express diverse ideas and information, unencumbered by censorship,
7 discrimination, or bias;

8 (7) as places of public accommodation, public libraries are obligated to
9 ensure their services, facilities, and resources are accessible and inclusive to
10 all, without favor or discrimination;

11 (8) libraries play a vital role in fostering a culture of intellectual freedom
12 and inquiry, allowing individuals to explore a wide range of subjects without
13 fear of reprisal, ridicule, or discrimination;

14 (9) individuals use libraries and library materials with the expectation
15 that library records will remain confidential and that library property will be
16 protected by the same public safety standards as other educational centers;

17 (10) Vermont's library trustees, librarians, and library staff will benefit
18 from a certificate program that recognizes their meaningful roles within
19 Vermont's library systems and their dedication to continuing education; and

1 (11) Vermont’s public libraries will benefit from updated minimum
2 standards that may improve policies governing materials, programming,
3 accessibility, and public access to information technology.

4 (b) Intent. Therefore, it is the intent of the General Assembly to protect
5 libraries from contracts and trade practices that interfere with libraries’ duties
6 and core missions; require library procedures and policies that will honor the
7 role of libraries as centers for intellectual freedom; foster the role of libraries as
8 community centers; and empower the Department of Libraries to provide
9 guidance, education, and minimum standards for all of Vermont’s libraries.

10 * * * Licensing of Electronic Literary Products * * *

11 Sec. 2. 22 V.S.A. chapter 3, subchapter 4 is added to read:

12 Subchapter 4. Electronic Literary Products

13 § 161. DEFINITIONS

14 As used in this subchapter:

15 (1) “Digital audiobook” means a published work that has been
16 converted into a voice recording and released in a digital audio file for
17 listening on an electronic device.

18 (2) “Electronic book” means a text document that has been converted
19 into or published in a digital format that is read on an electronic device.

20 (3) “Electronic literary product” means a digital audiobook or an
21 electronic book.

1 (4) “Public funds” means any money received or spent by a public
2 library from State or municipal appropriations, taxes, fees, donations, or any
3 interest accumulating from the maintenance and investment of those sources.

4 (5) “Public library” means a public library as defined in subdivision
5 101(2) of this title.

6 (6) “Publisher” means one whose business is one or more of the
7 following: the manufacture, promulgation, license, or sale of books,
8 audiobooks, journals, magazines, newspapers, or other literary productions,
9 including those in the form of electronic literary materials.

10 § 162. ELECTRONIC LITERARY PRODUCTS; UNENFORCEABLE

11 CONTRACTS

12 (a) Any contract offered by a publisher to license electronic literary
13 products to the public in Vermont is governed by State law.

14 (b) Contracts to purchase or license electronic literary products that include
15 prohibited provisions as enumerated in section 183 of this subchapter are
16 unconscionable and are deemed unenforceable and void. The waiver of any of
17 the provisions of this subchapter is contrary to public policy and shall be
18 deemed unenforceable and void.

19 (c) A contract for electronic literary products shall contain no provision
20 that:

1 (1) precludes, limits, or restricts the library from performing its core
2 missions, including any provision that:

3 (A) precludes, limits, or restricts the library from licensing electronic
4 literary products;

5 (B) prohibits the library from loaning electronic literary materials to
6 borrowers;

7 (C) restricts or limits the library's right to loan the electronic literary
8 materials to borrowers using technological protection measures;

9 (D) restricts or limits the use of technological protection measures for
10 loaning the work to borrowers;

11 (E) restricts or limits the library's right to make nonpublic
12 preservation copies of the electronic literary products;

13 (F) restricts or limits the library's right to loan electronic literary
14 products via interlibrary loan systems; or

15 (G) restricts or limits the library's ability to virtually recite text and
16 display artwork of any products to library patrons such that the products would
17 not have the same educational utility as when recited or displayed at a library
18 facility;

19 (2) restricts the number of licenses for electronic literary products that
20 the library may acquire after the same item is made available to the public;

1 (3) requires the library to acquire a license for any electronic literary
2 product at a price greater than that charged to the public for the same item;

3 (4) restricts the library's right to determine loan periods for licensed
4 electronic literary products;

5 (5) restricts the total number of times the library may loan any licensed
6 electronic literary product over the course of any license agreement;

7 (6) restricts the duration of any licensing agreements;

8 (7) restricts the library from disclosing any terms of its license
9 agreements to other libraries; or

10 (8) requires the library to violate any provision of section 172 of this
11 title.

12 § 163. ELECTRONIC LITERARY PRODUCTS; UNFAIR AND
13 DECEPTIVE TRADE PRACTICES

14 (a) A person who violates this subchapter commits an unfair and deceptive
15 act in trade and commerce in violation of 9 V.S.A. § 2453.

16 (b) Actions for relief pursuant to this title may be brought by libraries,
17 library officers, or borrowers, or shall be prosecuted by the Attorney General.

18 *** Library Policies; Selection and Retention of Library Materials ***

19 Sec. 3. 22 V.S.A. § 67 is amended to read:

20 § 67. PUBLIC LIBRARIES; STATEMENT OF POLICY; USE OF
21 FACILITIES AND RESOURCES

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(c) To ensure that Vermont libraries protect and promote the principles of free speech, inquiry, discovery, and public accommodation, it is necessary that the trustees, managers, or directors of free public libraries adopt policies that comply with the First Amendment to the U.S. Constitution and State and federal civil rights and antidiscrimination laws.

Sec. 4. 22 V.S.A. § 69 is added to read:

§ 69. PUBLIC LIBRARIES; SELECTION AND RECONSIDERATION OF LIBRARY MATERIALS

A public library shall adopt a policy for the selection and reconsideration of library materials that complies with the First Amendment to the U.S. Constitution, the Civil Rights Act of 1964, and State laws prohibiting discrimination in places of public accommodation. A public library may adopt as its policy a model policy adopted by the Department of Libraries pursuant to section 606 of this title.

Sec. 5. 22 V.S.A. § 606 is amended to read:

§ 606. OTHER DUTIES AND FUNCTIONS

The Department, in addition to the functions specified in section 605 of this title:

* * *

1 education institution; public library; place of worship; polling place during
2 election activities; the Vermont State House; or any federal, State, or municipal
3 building shall be imprisoned not more than two years or fined not more than
4 \$2,000.00, or both.

5 * * *

6 (h) As used in this section:

7 * * *

8 (12) “Public library” means a public library as defined in 22 V.S.A.

9 § 101.

10 * * *

11 Sec. 10. 13 V.S.A. § 4004 is amended to read:

12 § 4004. POSSESSION OF DANGEROUS OR DEADLY WEAPON IN A
13 SCHOOL BUS ~~OR~~, SCHOOL BUILDING, PUBLIC LIBRARY, OR
14 ON SCHOOL PROPERTY

15 (a) No person shall knowingly possess a firearm or a dangerous or deadly
16 weapon while within a school building, public library, or on a school bus. A
17 person who violates this section shall, for the first offense, be imprisoned for
18 not more than one year or fined not more than \$1,000.00, or both, and for a
19 second or subsequent offense shall be imprisoned for not more than three years
20 or fined not more than \$5,000.00, or both.

1 (b) No person shall knowingly possess a firearm or a dangerous or deadly
2 weapon on any school property or public library property with the intent to
3 injure another person. A person who violates this section shall, for the first
4 offense, be imprisoned for not more than three years or fined not more than
5 \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned
6 for not more than five years or fined not more than \$5,000.00, or both.

7 (c) This section shall not apply to:

8 * * *

9 (3) Possession and use of firearms or dangerous or deadly weapons if
10 the governing body, trustees, managers, or directors of a public library
11 authorize possession or use for specific occasions or for instructional or other
12 specific purposes.

13 (d) As used in this section:

14 * * *

15 (6) “Public library” means a public library as defined in 22 V.S.A.
16 § 101.

17 (7) “Public library property” means any property owned by a public
18 library.

19 * * *

1 Sec. 12. 22 V.S.A. § 141 is amended to read:

2 § 141. ESTABLISHMENT AND MAINTENANCE

3 (a) A municipality may establish and maintain public libraries for the use
4 of its residents ~~public libraries~~.

5 (b) A municipality may provide library services to the residents of other
6 municipalities, upon terms to be agreed upon, and may annually contract with
7 a library or library corporation to furnish library materials to its residents free
8 of charge ~~and~~. A municipality may appropriate money for that purpose the
9 purposes described in this subsection and may annually appropriate money for
10 the maintenance, care, increase, and support of a library held in trust for the
11 residents of the municipality.

12 Sec. 13. 22 V.S.A. § 142 is amended to read:

13 § 142. APPROPRIATIONS

14 A municipality establishing and maintaining a library or contracting for
15 library services ~~may~~ shall appropriate money as necessary for suitable facilities
16 and for the foundation of a public library ~~and~~. At the annual municipal
17 meeting, the municipality shall vote to appropriate money annually in
18 sufficient amounts for the maintenance, care, and increase of the library ~~in an~~
19 ~~amount voted at its annual meeting~~.

1 Sec. 14. 22 V.S.A. § 143 is amended to read:

2 § 143. TRUSTEES

3 (a) Unless a municipality ~~which~~ that has established or shall establish a
4 public library votes at its annual meeting to elect a board of trustees, the
5 governing body of the municipality shall appoint the trustees. The
6 appointment or election of the trustees shall continue in effect until changed at
7 an annual meeting of the municipality. When trustees are first chosen, they
8 shall be elected or appointed for staggered terms.

9 (b) The board shall consist of not less than five trustees who shall have full
10 power to:

11 (1) manage the public library, ~~make~~ and any property that shall come
12 into the hands of the municipality by gift, purchase, devise, or bequest for the
13 use and benefit of the library;

14 (2) adopt bylaws, and policies governing the operation of the library;

15 (3) elect officers, ~~establish a library policy and receive, control and~~
16 manage property which shall come into the hands of the municipality by gift,
17 purchase, devise or bequest for the use and benefit of the library;

18 (4) establish a library budget;

19 (5) hold regular meetings; and

20 (6) ensure compliance with the terms of any funding, grants, or
21 bequests.

