AN ACT to amend the education law, in relation to allowing library access to electronic books and digital audiobooks

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new section 286 to read as follows:

§ 286. Electronic books and digital audiobooks. 1. Definitions. For purposes of this section, the following terms shall have the following meanings:

a. "Aggregator" shall mean one whose business is the selling or licensing of access to collections of electronic literary material from multiple publishers.

b. "Borrower" shall mean a person or organization, including another library, to whom a library loans electronic literary material.

c. "Digital audiobook" shall mean a published work that is in the form of a narrated voice recording and is released as a digital audio file.

d. "Electronic book" shall mean a published work that is in written form and is released as a digital text file.

e. "Electronic literary material" means digital audiobooks and/or electronic books.

f. "Libraries" shall include:

(1) public libraries;
(2) free association libraries;
(3) school libraries and school library systems;
(4) Indian libraries;
(5) professional and technical libraries;
(6) academic and research libraries;
(7) special libraries;
(8) talking book and braille libraries; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ - ] is old law to be omitted.
g. "Loan" shall mean to create and transmit to a borrower a copy of electronic literary material and delete it at the end of the loan period.

h. "Loan period" shall mean the time between the transmission to a borrower of a copy of electronic literary material and such copies' deletion, as determined by the library providing the loan.

i. "Publisher" shall mean:

(1) one whose business is the manufacture, promulgation, license, and/or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions, including electronic literary materials; and

(2) an aggregator who enters into contracts with libraries for the purposes of licensing electronic literary material.

j. "Technological protection measures" shall mean any technology that ensures the secure loaning and/or circulation by a library of electronic literary material.

k. "Virtually" shall mean transmitted to receiving parties via the Internet in such a way that such transmission appears before such receiving parties on a computer, tablet, smart phone, or other electronic device.

2. Contracts between libraries and publishers. a. Any contract offered by a publisher to a library located in the state for the purposes of licensing electronic literary material to the public shall be governed by the laws of the state.

b. A contract between a library and a publisher to provide such library with electronic literary material shall not contain any provision that:

(1) precludes, limits, or restricts the library from performing customary operational and lending functions, including:

(i) licensing electronic literary material from publishers;

(ii) loaning electronic literary material to borrowers;

(iii) employing technological protection measures as is necessary to loan electronic library material;

(iv) making non-public preservation copies of electronic literary material;

(v) loaning electronic literary material via interlibrary loan systems;

(vi) determining loan periods for licensed electronic literary material;

(vii) virtually reciting text and displaying artwork of any material to library patrons at a library facility, such that such material would not have the same educational utility without such virtual recitation or display; and

(viii) disclosing any terms of its license agreements to other libraries;

(2) limits or restricts:

(i) the number of licenses for electronic literary material that a library may acquire after such material is made available to the public; or

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

(3) requires, coerces, or enables a library to:
(i) acquire a license for any electronic literary material at a price greater than that charged to the public for such material;
(ii) pay a cost-per-circulation fee to loan electronic literary material, unless such fee is substantially lower in aggregate than the cost of purchasing such material; or
(iii) violate the law protecting the confidentiality of a patron’s library records pursuant to section forty-five hundred nine of the civil practice law and rules.

3. Unfair and deceptive trade practices; unconscionability; remedies.

a. (1) Offers to license electronic literary material that include a provision that is prohibited pursuant to paragraph b of subdivision two of this section shall constitute unfair and deceptive trade practices pursuant to section three hundred forty-nine of the general business law, and any remedy provided pursuant to article twenty-two-A of the general business law shall be available for the enforcement of this section.
(2) Actions for relief pursuant to this section may be brought by libraries, library officers, or borrowers.
(3) Parties shall be enjoined by the courts from enforcing license agreements that include a provision that is prohibited pursuant to paragraph b of subdivision two of this section.

b. Contracts to license electronic literary material that include a provision that is prohibited pursuant to paragraph b of subdivision two of this section shall be unconscionable pursuant to section 2-302 of the uniform commercial code in violation of the public policy of this state and shall be deemed unenforceable and void. Any waiver of the provisions of this section shall be deemed unenforceable and void.

c. Any publisher that violates this section shall be subject to an injunction and liable to pay a civil penalty of not more than two thousand five hundred dollars for each violation or seven thousand five hundred dollars for each intentional violation, to be imposed by the courts.

4. Existing contracts. Nothing in this section shall apply to existing contracts between libraries and publishers to provide such libraries with electronic literary material that are in force prior to the effective date of this section.

§ 2. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legis-
lature that this act would have been enacted even if such invalid
provisions had not been included herein.
§ 3. This act shall take effect immediately.