

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 518

(Delegate Dumais)

Ways and Means

Education, Health, and Environmental Affairs

Public Libraries - Electronic Literary Product Licenses - Access

This bill requires a publisher who offers to license an electronic literary product to the public to also offer to license the electronic literary product to public libraries in the State on reasonable terms that would enable public libraries to provide library users with access to the electronic literary product. Violation of the bill's requirement is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. **The bill takes effect January 1, 2022.**

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division can handle the bill's requirements with existing resources.

Local Effect: Local public libraries may realize cost savings on digital publications, thereby allowing funds to be used to purchase more digital publications or for other purposes. Revenues are not affected.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: The terms of a license offered pursuant to the bill's requirement must include:

- a limitation on the number of users a public library may simultaneously allow to access an electronic literary product;

- a limitation on the number of days a public library may allow a user to access an electronic literary product; and
- the use of technological protection measures that would prevent a user from (1) maintaining access to an electronic literary product beyond the specified access period, and (2) allowing other users to access an electronic literary product.

Furthermore, any license terms may not include a limitation on the number of electronic literary product licenses a public library may purchase on the same date the electronic literary product is made available to the public.

Current Law: State law does not regulate electronic literary product licensing for public libraries.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Local Expenditures: The Maryland State Library Agency (MSLA) advises that many popular book titles are not available for public libraries to license at the same time the electronic books are made available to the public due to restrictions placed on sales by large publishers such as Amazon.com and Audible. In addition, public libraries are charged significantly higher amounts to license the same electronic books. By requiring publishers to license content to public libraries in the State on reasonable terms, MSLA advises the

bill may result in cost savings to local public libraries. As a result, local libraries may be able to redirect funds to other purposes, such as purchasing additional high-demand titles.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 432 (Senator King) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland State Library Agency; Department of Legislative Services

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Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510