

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 776
Finance

(Senators Montgomery and Jones-Rodwell)

Libraries - Electronic Book Licenses and Sales - Discriminatory Practices

This bill requires a person who offers to license or sell an electronic book (e-book) to consumers in the State to offer to also license or sell the e-book to libraries in the State. The bill prohibits a person from licensing or selling e-books to libraries in the State at a price greater than the highest price at which the person licensed or sold the e-book to consumers. A violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil penalty provision. A violation is not subject to an action for damages under MCPA or its criminal penalty provisions. Under the bill, "electronic book" means any publication containing text, images, or both that is read using a computer, a tablet, or any other electronic device.

Fiscal Summary

State Effect: Any potential savings for public institutions of higher education are not expected to have a material impact on State finances. The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. Assuming the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Any potential savings for local libraries and local community colleges are not expected to have a material impact on local government or local community college finances.

Small Business Effect: Minimal.

Analysis

Current Law: An unfair 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 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, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent 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.

Background: According to a January 2014 Pew Internet Research Center survey, 28% of adults read e-books in the past year, up from 23% in 2012. Moreover, 50% of American adults have either a tablet or e-reader, with 42% owning a tablet and 32% owning an e-reader.

To accommodate increasing e-book readership, libraries have begun lending e-books. However, reports suggest that pricing and the availability of e-books differ for libraries compared to consumers. According to *Governing Magazine*, issues include (1) publishers refusing to sell e-books to libraries; (2) publishers setting loan limits on individual e-book licenses; and (3) publishers charging libraries four to five times the cost of physical copies for e-book copies. Douglas County Libraries (DCL) in Colorado reports that, in July 2013, e-book prices for bestseller titles available to DCL were 5.5 times higher than the average consumer price.

In 2013, Connecticut considered a bill that required a person who offers e-book licenses to the public to offer a license to libraries on reasonable terms. The state eventually enacted a bill that required a study to be conducted on the availability of e-books to users of public libraries. The bill requires the study to be published no later than February 1, 2014.

Additional Comments: To the extent this bill applies to journal publications, additional cost savings may be realized.

Additional Information

Prior Introductions: None.

Cross File: HB 244 (Delegate Luedtke, *et al.*) - Economic Matters.

Information Source(s): Howard, Montgomery, and Prince George's counties; Maryland State Department of Education; *Governing Magazine*; Pew Internet Research Center; Douglas County Library; Fresno County Public Library; *Library Insider*; Department of Legislative Services

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