

No. 517, A.]

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CHAPTER 606

AN ACT to amend 269.565 (1), (4), (5) and (6) ; and to create 269.565 (1m) of the statutes, relating to interlocutory adjudications and declaratory judgments regarding obscene matter.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 269.565 (1) of the statutes is amended to read:

269.565 (1) Whenever there is reasonable cause to believe that any book, magazine, or other written matter, or picture, sound recording or film, which is being sold, loaned or distributed in any county, or is in the possession of any person who intends to sell, loan or distribute the same in any county, is obscene, the district attorney of such county, *in the name of the state*, as plaintiff, may file a complaint in the circuit court for such county directed against such matter by name. Upon the filing of such complaint, the court shall make a summary examination of such matter. If it is of the opinion that there is reasonable cause to believe that such matter is obscene, it shall issue an order, directed against said matter by name, to show cause why said matter should not be judicially determined to be obscene. This order shall be addressed to all persons interested in the publication, production, sale, loan, exhibition and distribution thereof, and shall be returnable within 30 days. Notice of such order shall be given by publication once each week for 2 successive weeks in a daily newspaper of gen-

eral circulation in such county. A copy of such order shall be sent by certified mail to the publisher, producer, and one or more distributors of said matter, to the persons holding the copyrights, and to the author, in case the names of any such persons appear on such matter or can with reasonable diligence be ascertained by said district attorney. Such publication shall commence and such notices shall be so mailed within 72 hours of the issuance of the order to show cause by the court.

SECTION 2. 269.565 (1m) of the statutes is created to read:

269.565 (1m) INTERLOCUTORY ADJUDICATION. After the issuance of the order to show cause under sub. (1), the court shall, on motion of the district attorney, make an interlocutory finding and adjudication that said book, magazine or other written matter or picture, sound recording or film is obscene, which finding and adjudication shall be of the same effect as the final judgment provided in sub. (3) or (5), but only until such final judgment is made or until further order of the court.

SECTION 3. 269.565 (4), (5) and (6) of the statutes are amended to read:

269.565 (4) If an answer is filed, the case shall be set down for a speedy hearing, *but an adjudication of default and order shall first be entered against all persons who have not appeared and answered in the manner provided in sub. (3)*. If any person answering so demands, the trial shall not be adjourned for a period of longer than 72 hours beyond the opening of court on the day following the filing of his answer. At such hearing, subject to the ordinary rules of evidence in civil actions, the court shall receive the testimony of experts and evidence as to the literary, cultural or educational character of said matter and as to the manner and form of its production, publication, advertisement, distribution and exhibition. The dominant effect of the whole of such matter shall be determinative of whether said matter is obscene.

(5) If, after such hearing, the court, or jury (unless its finding is contrary to law or to the great weight and clear preponderance of the evidence), determines that such matter is obscene, the court shall enter judgment that such matter is obscene. If it is so determined that such matter is not obscene, the court shall enter judgment dismissing the complaint, and a total of not more than \$100 in costs, in addition to taxable disbursements, may be awarded to the persons defending such matter, *which shall be paid from the county treasury*. Any judgment under this subsection may be appealed to the supreme court pursuant to ch. 274 by any person adversely affected, and who is either interested in the publication, production, sale, loan, exhibition or distribution of said matter, or is the plaintiff district attorney.

(6) In any trial for a violation of s. 944.21 or 944.22, the proceeding under this section and the final judgment of the circuit court under sub. (3) or (5) *or the interlocutory adjudication under sub. (1m)*, shall be admissible in evidence on the issue of the obscenity of said matter and on the issue of the defendant's knowledge that said matter is obscene; provided, that if the judgment of the court sought to be introduced in evidence is one holding the matter to be obscene, it shall not be admitted unless the defendant in said criminal action was served with notice of the action under this section, or appeared in it, or is later served with notice of the judgment of the court hereunder, and the criminal prosecution is based upon conduct by said defendant occurring more than 18 hours after such service or such appearance, whichever is earlier.

Approved December 8, 1961.