

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2938 Obscene matter; injunction; adjudication; temporary or preliminary injunction; effect of injunction; distribution of obscene matter after summons and complaint; delegation of authority; criminal prosecution; proceedings.

Sec. 2938.

(1) The chief executive or legal officer of any city, village or charter township or prosecuting attorney of the county may institute and maintain an action in the circuit court against any person, firm or corporation to enjoin and prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photograph, figure or image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose.

(2) Any person, firm or corporation may also bring an action in the circuit court as plaintiff to obtain an adjudication of the lawful propriety of the sale, distribution, possession or acquisition of any item as follows:

(a) The item may be submitted to the chief executive or legal officer of the city, village, charter township or prosecuting attorney of the county in which the sale, distribution, possession or acquisition is intended to be had.

(b) The officer to whom submitted, within 5 days shall furnish to the person, firm or corporation by whom submitted, a written statement in positive and unequivocal words that the sale, distribution, possession or acquisition of such book or other article or thing so submitted is by him deemed or not deemed, as the case may be, to be in violation of the provisions of any section of the Michigan penal code.

(c) If the officer deems the sale, distribution, possession or acquisition to be in violation of the provisions of any section of the Michigan penal code, the person, firm or corporation making the submission may bring a civil action to adjudicate the lawful propriety of the sale, distribution, possession or acquisition.

(d) The officer to whom a submission is authorized to be made, without any submission being so made, may furnish to any person, firm or corporation a written statement covering any book or other article or thing referred to in (1), and thereupon the person, firm or corporation to whom so furnished has a like right to bring action as in the case of the statement furnished pursuant to a submission.

(3) In any action brought as provided in (2) the officer furnishing the written statement shall be made defendant thereto. The officer shall be given prior notice of the time and place of filing such action and has the right to appear at such time and place and seek an injunction against distribution pending the final adjudication thereon.

(4) A preliminary injunction or restraining order may be issued upon or at any time after the filing of the complaint. The person, firm or corporation sought to be enjoined is entitled to a trial of the issues within 1 day after joinder of issue and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(5) If a final order or judgment of injunction is entered in favor of such officer of the city, village or charter township and against the person, firm or corporation sought to be enjoined, the final order or judgment shall contain a provision directing the person, firm or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in (1) and the sheriff shall be directed to seize and destroy the same.

(6) In any action brought as herein provided the officer of the city, charter township or village shall not be required to file any undertaking before the issuance of an injunction order provided for in (4), is not liable for costs and is not liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.

(7) Every person, firm or corporation who sells, distributes or acquires possession with intent to sell or distribute any of the matter described in (1), after the service upon him of a summons and complaint in an action brought by such officer of any city, charter township or village pursuant to this section is chargeable with knowledge of the contents thereof.

(8) The legislative body of any city, village or charter township or board of supervisors of any county may transfer or delegate any of the power and authority of the chief executive or legal officer or prosecuting attorney, as the case may be, to any other officer or agency of the city, village, charter township or county and all acts done by the officer or agency to whom so transferred or delegated shall be as effective in law as if done by the officer in this section designated.

(9) Nothing in this section shall be construed to preclude or impair prosecution in the criminal courts for violation of any section of the Michigan penal code relating to obscene or other similar matters except when an adjudication has been made under the procedure authorized herein to the effect that the book, picture, or other subject of adjudication is not violative of any such law such adjudication is full protection for all persons against any prosecution for criminal penalties or other action in respect of the subject of such adjudication.

(10) Proceedings under this section are equitable in nature.

History: 1961, Act 236, Eff. Jan. 1, 1963