

MAINE STATE LEGISLATURE

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ONE - HUNDRETH LEGISLATURE

Legislative Document

No. 1393

S. P. 433

In Senate, February 8, 1961

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Farris of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Relating to Obscene Printed or Written Matter or Material.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 134, §§ 29-A - 29-O, additional. Chapter 134 of the Revised Statutes is amended by adding 15 new sections to be numbered 29-A to 29-O, to read as follows:

‘Obscene Matter or Material.

Sec. 29-A. Definitions. The following words, terms and phrases used in sections 29-A to 29-O shall, for the purpose of sections 29-A to 29-O, have the meanings respectively ascribed to them in this section:

I. Mailable matter. “Mailable matter” means:

A. Printed or written matter or material having second class mailing privileges under the laws of the United States; or

B. Any other printed or written matter or material which has not been determined to be nonmailable under the laws of the United States.

II. Obscene. “Obscene” means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

III. Person. “Person” means any individual, partnership, firm, association, corporation or other legal entity.

IV. Printed or written matter or material. “Printed or written matter or material” means any book, pamphlet, magazine, periodical, newspaper, picture

magazine, comic book, story paper or other printed or written matter. It does not include written or printed matter or material used by or in any recognized religious, scientific or educational institution.

Sec. 29-B. Criminal provisions concerning obscene printed or written matter or material other than mailable matter. Any person who, with knowledge, or by the exercise of reasonable diligence should have knowledge of its contents, sends or causes to be sent, or brings or causes to be brought, into this State for sale or commercial distribution, or in this State prepares, sells, exhibits or commercially distributes, or gives away or offers to give away, or has in his possession with intent to sell or commercially distribute or to exhibit or to give away or offer to give away any obscene printed or written matter or material, other than mailable matter, or any mailable matter made subject to this section by virtue of section 29-J shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both, for each offense.

Sec. 29-C. Mailable matter; commencement of action. Whenever the Attorney General or the county attorney for any county has reasonable cause to believe that any person, with knowledge of its contents, is engaged in sending or causing to be sent, bringing or causing to be brought, into this State for sale or commercial distribution, or is in this State preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell or commercially distribute or to exhibit or give away or offer to give away, any obscene mailable matter, the Attorney General or the county attorney for the county into which such mailable matter is sent or caused to be sent, brought or caused to be brought, or in which it is prepared, sold, exhibited or commercially distributed or given away or offered to be given away, or possessed, shall institute an action in the Superior Court for that county for an adjudication of the obscenity of the mailable matter.

The Maine Rules of Civil Procedure, hereinafter in sections 29-D to 29-O, referred to as Maine Civil Practice, and all existing and future amendments of said act and modifications thereof, and the rules now or hereafter adopted pursuant to said act, shall apply to all proceedings hereunder except as otherwise provided in sections 29-A to 29-O.

Sec. 29-D. Filing and form of complaint. The action authorized by section 29-C shall be commenced by the filing of a complaint to which shall be attached as an exhibit a true copy of the allegedly obscene mailable matter. The complaint shall be directed against the mailable matter by name or description; allege its obscene nature; designate as respondents and list the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into this State for sale or commercial distribution and of any person in this State preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away; seek an adjudication that it is obscene; seek a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into this State for sale or commercial distribution, or in this State preparing, selling, exhibiting or commercially distribut-

ing it, giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away; seek its surrender, seizure and destruction.

Sec. 29-E. Examination of complaint and mailable matter. Upon the filing of the complaint described in section 29-D, the Attorney General or the county attorney, as the case may be, shall present the same, together with the mailable matter exhibited thereto, as soon as practicable to the court for its examination and reading.

If after such examination and reading the court finds no probable cause to believe such mailable matter to be obscene, the court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action.

If after such examination and reading the court finds probable cause to believe such mailable matter to be obscene, the court shall cause an endorsement to that effect to be placed and dated upon the complaint whereupon it shall be the responsibility of the Attorney General or the county attorney, as the case may be, promptly to have service of the complaint made upon any or all defendants in accordance with Rule 4 of Maine Civil Practice except that in the case of any nonresident defendant, service shall be made in the manner authorized by section 29-O.

Sec. 29-F. Pleadings by defendant; appearance; motions; answers. The rules of Maine Civil Practice shall govern all appearances, motions and answers of the defendant.

If, after service of summons has been effected upon all respondents, no person appears and files an answer on or before the return date specified in the summons, the court may forthwith adjudge whether the mailable matter so exhibited to the endorsed complaint is obscene and enter an appropriate final judgment.

Sec. 29-G. Public policy, procedure and evidence. The public policy of this State requires that all proceedings prescribed in sections 29-A to 29-O, other than criminal actions under section 29-B, be heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech. The rules of Maine Civil Practice shall be applicable to the trial of issue.

At the trial, evidence may be introduced pertaining but not limited to the following: Whether to the average person, applying contemporary standards, the dominant theme of the mailable matter taken as a whole appeals to prurient interest; the artistic, literary, scientific and educational merits of the mailable matter considered as a whole; the intent of the author and publisher in preparing, writing and publishing the mailable matter; the appeal to prurient interest, or absence thereof, in advertising or other promotion of the mailable matter.

Sec. 29-H. Judgment. In the event of a finding that the mailable matter exhibited to the complaint is not obscene, the court shall enter judgment accordingly and shall dismiss the complaint. In the event of a finding that the mailable matter exhibited to the complaint is obscene, the court shall enter judgment including debts owing to him, which may be situated or found in this State.

to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any defendant prohibiting him from doing or continuing to do any act condemned by sections 29-A to 29-O; direct any resident defendant to dispose of all such obscene mailable matter in his possession or under his control under such conditions and within such time as the court may find to be reasonable; if any defendant shall fail fully to comply with the judgment or order of the court, direct all sheriffs and police officers within the State to seize and destroy all such obscene mailable matter in the possession or under the control of such respondent wherever the same may be found within the State.

Sec. 29-I. Injunctions. No preliminary injunction shall be issued without notice to the defendants named in the complaint.

If the court pursuant to section 29-E finds probable cause to believe the exhibited mailable matter to be obscene, the court may, upon the motion of the Attorney General or the county attorney, as the case may be, issue a temporary restraining order. No temporary restraining order shall be granted without notice to the respondents named in the complaint unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury to the morals and general welfare of the people of the State will result before notice can be served and a hearing had thereon. Rule 65 of Maine Civil Practice shall govern the issuance of temporary restraining orders and injunctions.

Sec. 29-J. When mailable matter is not exempt. Any mailable matter which, following the entry of a judgment that it is obscene, or during the period before the entry of that judgment but after the complaint, to which such mailable matter has been exhibited, has been endorsed as provided in section 29-E, is sent or caused to be sent, brought or caused to be brought, into this State for sale or commercial distribution or which in this State is sold, exhibited or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment or of the endorsement of such complaint, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of section 29-B.

Sec. 29-K. Contempt. Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to section 29-I and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction after notice and hearing shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both, for each offense.

Sec. 29-L. Execution. Any fine levied against any person under sections 29-A to 29-O may be executed against any of his real property, personal property, tangible or intangible, choses in action, or property of any kind or nature,

Sec. 29-M. Extradition. In all cases in which a court has entered its judgment, pursuant to section 29-H, that theailable matter in question is obscene, and a charge of continuing violation is thereafter brought against a person who, being a respondent to such judgment, cannot be found in this State, the executive authority of this State, being the Governor or any person performing the functions of Governor by authority of the law of this State, shall, unless such person shall have appealed from such judgment and such appeal has not been finally determined, demand his extradition from the executive authority of the State in which such person may be found, pursuant to the law of this State.

Sec. 29-N. Presumptions. The possession of 3 or more copies of any single item of printed or written matter or material, or the possession of a combined total of any 6 copies of any items of printed or written matter or material, except the possession of them for the purpose of return to the person from whom received, shall be prima facie evidence that they are intended for sale or commercial distribution, exhibition or gift. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

Sec. 29-O. Nonresidents and noncitizens; submitting to jurisdiction; process; consent. In order to protect the morals and general welfare of the citizens and residents of this State against obscene printed or written matter or material originating outside this State, it is the purpose of this section to subject to the jurisdiction of the courts of this State those persons who are responsible for the importation of such matter into this State and by that act:

I. Submits to jurisdiction. Submits himself to the jurisdiction of the courts of this State in any action authorized by section 29-C.

II. Secretary of State agent for service. Constitutes the Secretary of State his agent for service of process in any action authorized by section 29-C, and consents that service of process may be made by serving a copy upon the Secretary of State or by filing a copy in the Secretary of State's office, and that this service shall be sufficient service upon such nonresident provided that, one day after service, notice of the service and a copy of the process are sent by registered or certified mail by the Attorney General or county attorney, as the case may be, to him at his last known address and proof of such mailing filed with the clerk of the court within one day after mailing;

III. Fine executed against property. Consents that any fine levied against him under section 29-K may be executed against any of his real property, personal property, tangible or intangible, choses in action, or property of any kind or nature, including debts owing to him, which are situated or found in this State.

Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may also be made in any action authorized by section 29-C in accordance with Maine Civil Practice.'