



## 104TH GENERAL ASSEMBLY

### State of Illinois

2025 and 2026

HB3736

Introduced 2/18/2025, by Rep. Robert "Bob" Rita

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20

from Ch. 38, par. 11-20

Amends the Criminal Code of 2012. Provides that any person who is harmed by the unlawful sale, distribution, promotion, or exhibition of obscene material may bring a civil action against the individual or entity responsible for the violation. Provides that the prevailing plaintiff in a civil action under this provision may be entitled to compensatory damages for actual damages suffered as a result of the obscenity violation. Provides that, in addition to compensatory damages, the plaintiff may recover punitive damages as determined by the court. Provides that damages shall not exceed \$10,000,000 for each count in the civil action, with each separate instance of unlawful sale, distribution, promotion, or exhibition of obscene material constituting a separate count. Provides that a civil action for obscenity violations under this provision must be brought within 5 years of the discovery of the violation or the harm caused by the violation. Provides that, in any successful civil action, the plaintiff may be entitled to recover reasonable attorney's fees in addition to the damages awarded. Provides that a court may grant injunctive relief to prevent further violations of this provision, including the cessation of the sale, distribution, or exhibition of obscene material by the defendant. Provides that the civil action may be brought in the county where the defendant resides, where the unlawful sale, distribution, promotion, or exhibition occurred, or where the plaintiff resides, if applicable.

LRB104 09463 RLC 19524 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by  
5 changing Section 11-20 as follows:

6 (720 ILCS 5/11-20) (from Ch. 38, par. 11-20)  
7 Sec. 11-20. Obscenity.

8 (a) Elements of the Offense. A person commits obscenity  
9 when, with knowledge of the nature or content thereof, or  
10 recklessly failing to exercise reasonable inspection which  
11 would have disclosed the nature or content thereof, he or she:

12 (1) Sells, delivers or provides, or offers or agrees  
13 to sell, deliver or provide any obscene writing, picture,  
14 record or other representation or embodiment of the  
15 obscene; or

16 (2) Presents or directs an obscene play, dance or  
17 other performance or participates directly in that portion  
18 thereof which makes it obscene; or

19 (3) Publishes, exhibits or otherwise makes available  
20 anything obscene; or

21 (4) Performs an obscene act or otherwise presents an  
22 obscene exhibition of his or her body for gain; or

23 (5) Creates, buys, procures or possesses obscene

1 matter or material with intent to disseminate it in  
2 violation of this Section, or of the penal laws or  
3 regulations of any other jurisdiction; or

4 (6) Advertises or otherwise promotes the sale of  
5 material represented or held out by him or her to be  
6 obscene, whether or not it is obscene.

7 (b) Obscene Defined.

8 Any material or performance is obscene if: (1) the average  
9 person, applying contemporary adult community standards, would  
10 find that, taken as a whole, it appeals to the prurient  
11 interest; and (2) the average person, applying contemporary  
12 adult community standards, would find that it depicts or  
13 describes, in a patently offensive way, ultimate sexual acts  
14 or sadomasochistic sexual acts, whether normal or perverted,  
15 actual or simulated, or masturbation, excretory functions or  
16 lewd exhibition of the genitals; and (3) taken as a whole, it  
17 lacks serious literary, artistic, political or scientific  
18 value.

19 (b-1) Civil Remedy for Victims of Obscenity Violations.

20 (1) Civil Action for Victims. Any person who is harmed  
21 by the unlawful sale, distribution, promotion, or  
22 exhibition of obscene material under this Section may  
23 bring a civil action against the individual or entity  
24 responsible for the violation.

25 (2) Damages. A prevailing plaintiff in a civil action  
26 under this subsection may be entitled to compensatory

1 damages for actual damages suffered as a result of the  
2 obscenity violation. In addition to compensatory damages,  
3 the plaintiff may recover punitive damages as determined  
4 by the court. Damages shall not exceed \$10,000,000 for  
5 each count in the civil action, with each separate  
6 instance of unlawful sale, distribution, promotion, or  
7 exhibition of obscene material constituting a separate  
8 count.

9 (3) Statute of Limitations. A civil action for  
10 obscenity violations under this subsection must be brought  
11 within 5 years of the discovery of the violation or the  
12 harm caused by the violation.

13 (4) Attorney's Fees. In any successful civil action,  
14 the plaintiff may be entitled to recover reasonable  
15 attorney's fees, in addition to the damages awarded.

16 (5) Injunctive Relief. A court may grant injunctive  
17 relief to prevent further violations of this Section,  
18 including the cessation of the sale, distribution, or  
19 exhibition of obscene material by the defendant.

20 (6) Venue. The civil action may be brought in the  
21 county where the defendant resides, where the unlawful  
22 sale, distribution, promotion, or exhibition occurred, or  
23 where the plaintiff resides, if applicable.

24 (c) Interpretation of Evidence.

25 Obscenity shall be judged with reference to ordinary  
26 adults, except that it shall be judged with reference to

1 children or other specially susceptible audiences if it  
2 appears from the character of the material or the  
3 circumstances of its dissemination to be specially designed  
4 for or directed to such an audience.

5 Where circumstances of production, presentation, sale,  
6 dissemination, distribution, or publicity indicate that  
7 material is being commercially exploited for the sake of its  
8 prurient appeal, such evidence is probative with respect to  
9 the nature of the matter and can justify the conclusion that  
10 the matter is lacking in serious literary, artistic, political  
11 or scientific value.

12 In any prosecution for an offense under this Section  
13 evidence shall be admissible to show:

14 (1) The character of the audience for which the  
15 material was designed or to which it was directed;

16 (2) What the predominant appeal of the material would  
17 be for ordinary adults or a special audience, and what  
18 effect, if any, it would probably have on the behavior of  
19 such people;

20 (3) The artistic, literary, scientific, educational or  
21 other merits of the material, or absence thereof;

22 (4) The degree, if any, of public acceptance of the  
23 material in this State;

24 (5) Appeal to prurient interest, or absence thereof,  
25 in advertising or other promotion of the material;

26 (6) Purpose of the author, creator, publisher or

1 disseminator.

2 (d) Sentence.

3 Obscenity is a Class A misdemeanor. A second or subsequent  
4 offense is a Class 4 felony.

5 (e) Permissive Inference.

6 The trier of fact may infer an intent to disseminate from  
7 the creation, purchase, procurement or possession of a mold,  
8 engraved plate or other embodiment of obscenity specially  
9 adapted for reproducing multiple copies, or the possession of  
10 more than 3 copies of obscene material.

11 (f) Affirmative Defenses.

12 It shall be an affirmative defense to obscenity that the  
13 dissemination:

14 (1) Was not for gain and was made to personal  
15 associates other than children under 18 years of age;

16 (2) Was to institutions or individuals having  
17 scientific or other special justification for possession  
18 of such material.

19 (g) Forfeiture of property. A person who has been  
20 convicted previously of the offense of obscenity and who is  
21 convicted of a second or subsequent offense of obscenity is  
22 subject to the property forfeiture provisions set forth in  
23 Article 124B of the Code of Criminal Procedure of 1963.

24 (Source: P.A. 96-712, eff. 1-1-10; 96-1551, eff. 7-1-11.)