

**SUBSTITUTE FOR  
SENATE BILL NO. 1295**

A bill to amend 1945 PA 246, entitled

"An act to authorize township boards to adopt ordinances and regulations to secure the public health, safety and general welfare; to provide for the establishment of a township police department; to provide for policing of townships by certain law enforcement officers and agencies; to provide for the publication of ordinances; to prescribe powers and duties of township boards and certain local and state officers and agencies; to provide sanctions; and to repeal all acts and parts of acts in conflict with the act,"

by amending section 1 (MCL 41.181), as amended by 1999 PA 257, and by adding section 1a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. (1) The township board of a township, at a regular  
2 or special meeting by a majority of the members elect of the  
3 township board, may adopt ordinances regulating the public  
4 health, safety, and general welfare of persons and property,  
5 including, but not limited to, ordinances concerning fire  
6 protection, licensing or use of bicycles, traffic, parking of

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1 vehicles, sidewalk maintenance and repairs, the licensing of  
2 business establishments, the licensing and regulating of public  
3 amusements, and the regulation or prohibition of public nudity,  
4 and may provide sanctions for the violation of the ordinances.  
5 The township shall enforce the ordinances and may employ and  
6 establish a police department with full power to enforce township  
7 ordinances and state laws. If state laws are to be enforced, a  
8 township shall have a law enforcement unit or may by resolution  
9 appropriate funds and call upon the sheriff of the county in  
10 which the township is located, the department of state police, or  
11 another law enforcement agency to provide special police protec-  
12 tion for the township. The sheriff, department of state police,  
13 or other local law enforcement agency shall, if called upon, pro-  
14 vide special police protection for the township and enforce local  
15 township ordinances to the extent that township funds are appro-  
16 priated for the enforcement. Special township deputies appointed  
17 by the sheriff shall be under the jurisdiction of and solely  
18 responsible to the sheriff. Ordinances regulating traffic and  
19 parking of vehicles and bicycles shall not contravene the  
20 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

21 (2) Ordinances enacted may apply to streets, roads, high-  
22 ways, or portions of the township determined by the township  
23 board or may be limited to specified platted lands within the  
24 township, and with respect to these lands shall be valid and  
25 enforceable whether the roads and streets have been dedicated to  
26 public use or not. Township boards of townships enacting  
27 ordinances under this section may accept contributions from duly

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1 constituted representatives of the platted lands benefited by the  
2 ordinances to defray administrative and enforcement costs inci-  
3 dent to the enactment of ordinances.

4 (3) A township may adopt a provision of any state statute  
5 for which the maximum period of imprisonment is 93 days, ~~or the~~  
6 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, SECTION  
7 5208 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5208, SEC-  
8 TION 465A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.465A,  
9 OR SECTION 7 OF 1978 PA 33, MCL 722.677, by reference in an  
10 adopting ordinance, which statute shall be clearly identified in  
11 the adopting ordinance. A township shall not enforce any provi-  
12 sion adopted by reference for which the maximum period of impris-  
13 onment is greater than 93 days.

14 (4) As used in this section: ~~, "public"~~

15 (A) "PUBLIC nudity" means ~~knowingly or intentionally~~  
16 displaying THE KNOWING OR INTENTIONAL DISPLAY in a public place,  
17 or for payment or promise of payment by any person including, but  
18 not limited to, payment or promise of payment of an admission  
19 fee, ~~any~~ BY AN INDIVIDUAL OF THAT individual's genitals or anus  
20 with less than a fully opaque covering ~~,~~ or a female  
21 individual's breast with less than a fully opaque covering of the  
22 nipple. ~~and areola.~~ Public nudity does not include any of the  
23 following:

24 (i) ~~(a)~~ A woman's breast-feeding of a baby whether or not  
25 the nipple ~~or areola~~ is exposed during or incidental to the  
26 feeding.

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1 ~~(b) Material as defined in section 2 of 1984 PA 343, MCL~~  
2 ~~752.362.~~

3 ~~(c) Sexually explicit visual material as defined in section~~  
4 ~~3 of 1978 PA 33, MCL 722.673.~~

5 (ii) A DISPLAY OF NUDITY BY A CHILD UNDER 12 YEARS OF AGE.

6 (iii) A DISPLAY OF NUDITY IN A THEATRICAL PRODUCTION THAT IS  
7 PERFORMED IN A THEATER BY A PROFESSIONAL OR AMATEUR THEATRICAL OR  
8 MUSICAL COMPANY AND THAT HAS SERIOUS LITERARY, ARTISTIC, POLITI-  
9 CAL, OR SCIENTIFIC VALUE.

10 (iv) A DISPLAY OF NUDITY BY A MODEL IN A MODELING CLASS  
11 OPERATED BY A PROPRIETARY SCHOOL LICENSED BY THIS STATE, A COL-  
12 LEGE, JUNIOR COLLEGE, OR UNIVERSITY SUPPORTED ENTIRELY OR PARTLY  
13 BY TAXATION, OR A PRIVATE COLLEGE OR UNIVERSITY THAT MAINTAINS  
14 AND OPERATES EDUCATIONAL PROGRAMS IN WHICH CREDITS ARE TRANSFER-  
15 ABLE EITHER TO A COLLEGE, JUNIOR COLLEGE, OR UNIVERSITY SUPPORTED  
16 ENTIRELY OR PARTLY BY TAXATION OR TO AN ACCREDITED PRIVATE  
17 COLLEGE.

18 (B) "PUBLIC PLACE" MEANS A LOCATION THAT IS FREQUENTED BY  
19 THE PUBLIC, OR WHERE THE PUBLIC IS PRESENT OR LIKELY TO BE  
20 PRESENT, OR WHERE A PERSON MAY REASONABLY BE EXPECTED TO BE  
21 OBSERVED BY MEMBERS OF THE PUBLIC. PUBLIC PLACE INCLUDES, BUT IS  
22 NOT LIMITED TO, STREETS; SIDEWALKS; PARKS; BEACHES; BUSINESS AND  
23 COMMERCIAL ESTABLISHMENTS, WHETHER FOR PROFIT OR NOT-FOR-PROFIT  
24 AND WHETHER ENTRANCE IS OPEN TO THE PUBLIC AT LARGE OR SUBJECT TO  
25 A COVER CHARGE OR MEMBERSHIP REQUIREMENT; BOTTLE CLUBS; HOTELS;  
26 MOTELS; RESTAURANTS; NIGHT CLUBS; COUNTRY CLUBS; CABARETS; AND  
27 MEETING FACILITIES USED BY RELIGIOUS, SOCIAL, FRATERNAL, OR

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1 SIMILAR ORGANIZATIONS. PUBLIC PLACE DOES NOT INCLUDE ANY OF THE  
2 FOLLOWING:

3 (i) AN ENCLOSED SINGLE SEX PUBLIC REST ROOM.

4 (ii) AN ENCLOSED SINGLE SEX FUNCTIONAL SHOWER, LOCKER ROOM  
5 FACILITY, OR DRESSING ROOM FACILITY.

6 (iii) AN ENCLOSED MOTEL ROOM OR HOTEL ROOM DESIGNED AND  
7 INTENDED AS A SLEEPING ACCOMMODATION.

8 (iv) A DOCTOR'S OFFICE.

9 (v) ANY PORTION OF A HOSPITAL OR SIMILAR PLACE IN WHICH  
10 NUDITY OR EXPOSURE IS NECESSARILY AND CUSTOMARILY EXPECTED OUT-  
11 SIDE OF THE HOME AND THE SPHERE OF PRIVACY IS CONSTITUTIONALLY  
12 PROTECTED.

13 (vi) A PRIVATE FACILITY THAT HAS BEEN FORMED AS A  
14 FAMILY-ORIENTED CLOTHING OPTIONAL FACILITY AND IS PROPERLY  
15 LICENSED BY THIS STATE.

16 SEC. 1A. THIS STATE HAS AN INTEREST IN ANY COURT PROCEEDING  
17 IN WHICH A PLAINTIFF CHALLENGES AN ORDINANCE REGULATING OR

18 PROHIBITING PUBLIC NUDITY THAT IS ADOPTED BY A TOWNSHIP UNDER THIS  
SECTION. A PLAINTIFF WHO CHALLENGES AN ORDINANCE REGULATING OR  
19 PROHIBITING PUBLIC NUDITY SHALL SERVE NOTICE OF THE PROCEEDING ON  
THE ATTORNEY GENERAL, WHO SHALL INTERVENE IN THE PROCEEDING ON  
20 BEHALF OF THIS STATE. THIS SECTION DOES NOT EXPAND, RESTRICT, OR  
OTHERWISE ALTER THE IMMUNITY FROM LIABILITY GRANTED BY LAW TO A  
TOWNSHIP OR THIS STATE.

19 Enacting section 1. The authority of a township to prohibit  
20 or regulate public nudity including, but not limited to, the form  
21 of regulation that was upheld by the United States Supreme Court  
22 in City of Erie v Pap's A.M., 529 US \_\_\_\_; 120 S Ct 1382; 146 L  
23 Ed 2d 65; 68 USLW 4239 (March 29, 2000), is recognized by this  
24 state. The authority granted in this amendatory act shall not be  
25 construed to limit the authority of a township to enact an ordi-  
26 nance regulating or prohibiting public nudity that is based upon  
27 the ordinance of the city of Erie, Pennsylvania that was the

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1 subject of City of Erie v Pap's A.M., 529 US \_\_\_\_\_; 120 S Ct  
2 1382; 146 L Ed 2d 65; 68 USLW 4239 (March 29, 2000).

3 Enacting section 2. This amendatory act takes effect  
4 June 1, 2001.

5 Enacting section 3. This amendatory act does not take  
6 effect unless all of the following bills of the 90th Legislature  
7 are enacted into law:

8 (a) Senate Bill No. 1116.

9 (b) Senate Bill No. 1293.

10 (c) Senate Bill No. 1296.

11 (d) Senate Bill No. 1297.

12 (e) House Bill No. 4327.

13 (f) House Bill No. 5133.

14 (g) House Bill No. 5134.