

**SUBSTITUTE FOR
SENATE BILL NO. 1296**

A bill to amend 1909 PA 278, entitled
"The home rule village act,"
by amending section 23 (MCL 78.23), as amended by 1999 PA 258,
and by adding sections 24d and 24e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 23. Each village charter shall provide for all of the
2 following:

3 (a) The election of and compensation for a president who
4 shall be the executive head, a clerk, and a legislative body. An
5 election may be by a partisan, nonpartisan, or preferential
6 ballot or by any other legal method of voting.

7 (b) The election or appointment of other officers or admin-
8 istrative boards considered necessary.

9 (c) The levying and collection of village taxes.

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1 (d) That the subjects of taxation for municipal purposes
2 shall be the same as for state, county, and school purposes under
3 the general law.

4 (e) An annual appropriation of money for municipal
5 purposes.

6 (f) The public peace and health, and for the safety of per-
7 sons and property.

8 (g) One or more election districts; the time, place, and
9 means of holding elections; and the registration of electors.

10 (h) Keeping in the English language a written or printed
11 journal of proceedings of the legislative body.

12 (i) The publication of an ordinance or a synopsis of an
13 ordinance before the ordinance becomes operative. ~~Any charter~~
14 ~~provision to the contrary notwithstanding, a village may adopt an~~
15 ~~ordinance punishable by imprisonment for not more than 93 days or~~
16 ~~a fine of not more than \$500.00, or both, if the violation sub-~~
17 ~~stantially corresponds to a violation of state law that is a mis-~~
18 ~~demeanor for which the maximum period of imprisonment is 93~~
19 ~~days. Whether or not provided in its charter, a village may~~
20 ~~adopt a provision of any state statute for which the maximum~~
21 ~~period of imprisonment is 93 days, the Michigan vehicle code,~~
22 ~~1949 PA 300, MCL 257.1 to 257.923, or a plumbing code, electrical~~
23 ~~code, or building code that has been promulgated by this state,~~
24 ~~by a department, board, or other agency of this state, or by an~~
25 ~~organization or association that is organized and conducted for~~
26 ~~the purpose of developing that code, by making reference to that~~
27 ~~law or code in an adopting ordinance without publishing that law~~

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~~1 or code in full. The law or code shall be clearly identified in
2 the ordinance, and a statement of the purpose of the law or code
3 shall be published with the adopting ordinance. Printed copies
4 of the law or code shall be kept in the office of the village
5 clerk and made available to the public at all times. The publi-
6 cation shall contain a notice stating that a complete copy of the
7 law or code is available to the public at the office of the vil-
8 lage clerk. A village shall not enforce any provision adopted by
9 reference for which the maximum period of imprisonment is greater
10 than 93 days.~~

11 (j) That the business of the legislative body shall be con-
12 ducted at a public meeting of the body held in compliance with
13 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and all
14 records of the municipality shall be available to the public
15 under the freedom of information act, 1976 PA 442, MCL 15.231 to
16 15.246.

17 (k) Adopting, continuing, amending, or repealing village
18 ordinances.

19 (l) A system of accounts that conforms to a uniform system
20 required by law.

21 SEC. 24D. (1) WHETHER OR NOT SO PROVIDED IN ITS CHARTER, A
22 VILLAGE MAY, BY ORDINANCE, REGULATE OR PROHIBIT PUBLIC NUDITY
23 WITHIN VILLAGE BOUNDARIES.

24 (2) THIS STATE HAS AN INTEREST IN ANY COURT PROCEEDING IN WHICH
25 A PLAINTIFF CHALLENGES AN ORDINANCE REGULATING OR PROHIBITING PUBLIC
26 NUDITY THAT IS ADOPTED BY A VILLAGE UNDER THIS SECTION. A PLAINTIFF
WHO CHALLENGES AN ORDINANCE REGULATING OR PROHIBITING PUBLIC NUDITY
SHALL SERVE NOTICE OF THE PROCEEDING ON THE ATTORNEY GENERAL. WHO
SHALL INTERVENE IN THE PROCEEDING ON BEHALF OF THIS STATE. THIS
SUBSECTION DOES NOT EXPAND, RESTRICT, OR OTHERWISE ALTER THE
IMMUNITY FROM LIABILITY GRANTED BY LAW TO A VILLAGE OR THIS STATE.

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1 (3) AS USED IN THIS SECTION:

2 (A) "PUBLIC NUDITY" MEANS THE KNOWING OR INTENTIONAL DISPLAY
3 IN A PUBLIC PLACE, OR FOR PAYMENT OR PROMISE OF PAYMENT BY ANY
4 PERSON INCLUDING, BUT NOT LIMITED TO, PAYMENT OR PROMISE OF PAY-
5 MENT OF AN ADMISSION FEE, BY AN INDIVIDUAL OF THAT INDIVIDUAL'S
6 GENITALS OR ANUS WITH LESS THAN A FULLY OPAQUE COVERING OR A
7 FEMALE INDIVIDUAL'S BREAST WITH LESS THAN A FULLY OPAQUE COVERING
8 OF THE NIPPLE. PUBLIC NUDITY DOES NOT INCLUDE ANY OF THE
9 FOLLOWING:

10 (i) A MOTHER'S BREAST-FEEDING OF A BABY WHETHER OR NOT THE
11 NIPPLE IS COVERED DURING OR INCIDENTAL TO THE FEEDING.

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

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

17 (iv) A DISPLAY OF NUDITY BY A MODEL IN A MODELING CLASS
18 OPERATED BY A PROPRIETARY SCHOOL LICENSED BY THIS STATE, A COL-
19 LEGE, JUNIOR COLLEGE, OR UNIVERSITY SUPPORTED ENTIRELY OR PARTLY
20 BY TAXATION, OR A PRIVATE COLLEGE OR UNIVERSITY THAT MAINTAINS
21 AND OPERATES EDUCATIONAL PROGRAMS IN WHICH CREDITS ARE TRANSFER-
22 ABLE EITHER TO A COLLEGE, JUNIOR COLLEGE, OR UNIVERSITY SUPPORTED
23 ENTIRELY OR PARTLY BY TAXATION OR TO AN ACCREDITED PRIVATE
24 COLLEGE.

25 (B) "PUBLIC PLACE" MEANS A LOCATION THAT IS FREQUENTED BY
26 THE PUBLIC, OR WHERE THE PUBLIC IS PRESENT OR LIKELY TO BE
27 PRESENT, OR WHERE A PERSON MAY REASONABLY BE EXPECTED TO BE

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1 OBSERVED BY MEMBERS OF THE PUBLIC. PUBLIC PLACE INCLUDES, BUT IS
2 NOT LIMITED TO, STREETS; SIDEWALKS; PARKS; BEACHES; BUSINESS AND
3 COMMERCIAL ESTABLISHMENTS, WHETHER FOR PROFIT OR NOT-FOR-PROFIT
4 AND WHETHER ENTRANCE IS OPEN TO THE PUBLIC AT LARGE OR SUBJECT TO
5 A COVER CHARGE OR MEMBERSHIP REQUIREMENT; BOTTLE CLUBS; HOTELS;
6 MOTELS; RESTAURANTS; NIGHT CLUBS; COUNTRY CLUBS; CABARETS; AND
7 MEETING FACILITIES USED BY RELIGIOUS, SOCIAL, FRATERNAL, OR SIMI-
8 LAR ORGANIZATIONS. PUBLIC PLACE DOES NOT INCLUDE ANY OF THE
9 FOLLOWING:

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

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

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

15 (iv) A DOCTOR'S OFFICE.

16 (v) ANY PORTION OF A HOSPITAL OR SIMILAR PLACE IN WHICH
17 NUDITY OR EXPOSURE IS NECESSARILY AND CUSTOMARILY EXPECTED OUT-
18 SIDE OF THE HOME AND THE SPHERE OF PRIVACY IS CONSTITUTIONALLY
19 PROTECTED.

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

23 SEC. 24E. ANY CHARTER PROVISION TO THE CONTRARY NOTWITH-
24 STANDING, A VILLAGE MAY ADOPT AN ORDINANCE PUNISHABLE BY IMPRIS-
25 ONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
26 \$500.00, OR BOTH, IF THE VIOLATION SUBSTANTIALLY CORRESPONDS TO A
27 VIOLATION OF STATE LAW THAT IS A MISDEMEANOR FOR WHICH THE

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1 MAXIMUM PERIOD OF IMPRISONMENT IS 93 DAYS. WHETHER OR NOT
2 PROVIDED IN ITS CHARTER, A VILLAGE MAY ADOPT A PROVISION OF ANY
3 STATE STATUTE FOR WHICH THE MAXIMUM PERIOD OF IMPRISONMENT IS 93
4 DAYS, THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1 TO
5 257.923, SECTION 5208 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
6 333.5208, SECTION 7 OF 1978 PA 33, MCL 722.677, SECTION 465A OF
7 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.465A, OR A PLUMBING
8 CODE, ELECTRICAL CODE, OR BUILDING CODE THAT HAS BEEN PROMULGATED
9 BY THIS STATE, BY A DEPARTMENT, BOARD, OR OTHER AGENCY OF THIS
10 STATE, OR BY AN ORGANIZATION OR ASSOCIATION THAT IS ORGANIZED AND
11 CONDUCTED FOR THE PURPOSE OF DEVELOPING THAT CODE, BY MAKING REF-
12 ERENCE TO THAT LAW OR CODE IN AN ADOPTING ORDINANCE WITHOUT PUB-
13 LISHING THAT LAW OR CODE IN FULL. THE LAW OR CODE SHALL BE
14 CLEARLY IDENTIFIED IN THE ORDINANCE, AND A STATEMENT OF THE PUR-
15 POSE OF THE LAW OR CODE SHALL BE PUBLISHED WITH THE ADOPTING
16 ORDINANCE. PRINTED COPIES OF THE LAW OR CODE SHALL BE KEPT IN
17 THE OFFICE OF THE VILLAGE CLERK AND MADE AVAILABLE TO THE PUBLIC
18 AT ALL TIMES. THE PUBLICATION SHALL CONTAIN A NOTICE STATING
19 THAT A COMPLETE COPY OF THE LAW OR CODE IS AVAILABLE TO THE
20 PUBLIC AT THE OFFICE OF THE VILLAGE CLERK. A VILLAGE SHALL NOT
21 ENFORCE ANY PROVISION ADOPTED BY REFERENCE FOR WHICH THE MAXIMUM
22 PERIOD OF IMPRISONMENT IS GREATER THAN 93 DAYS.

23 Enacting section 1. The authority of a home rule village to
24 prohibit or regulate public nudity including, but not limited to,
25 the form of regulation that was upheld by the United States
26 Supreme Court in City of Erie v Pap's A.M., 529 US ____; 120 S Ct
27 1382; 146 L Ed 2d 65; 68 USLW 4239 (March 29, 2000), is

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1 recognized by this state. The authority granted in this
2 amendatory act shall not be construed to limit the authority of a
3 home rule village to enact an ordinance prohibiting or regulating
4 public nudity that is based upon the ordinance of the city of
5 Erie, Pennsylvania that was the subject of City of Erie v Pap's
6 A.M., 529 US ____; 120 S Ct 1382; 146 L Ed 2d 65; 68 USLW 4239
7 (March 29, 2000).

8 Enacting section 2. This amendatory act takes effect
9 June 1, 2001.

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

- 13 (a) Senate Bill No. 1116.
- 14 (b) Senate Bill No. 1293.
- 15 (c) Senate Bill No. 1295.
- 16 (d) Senate Bill No. 1297.
- 17 (e) House Bill No. 4327.
- 18 (f) House Bill No. 5133.
- 19 (g) House Bill No. 5134.