

**SUBSTITUTE FOR
SENATE BILL NO. 1297**

A bill to amend 1895 PA 3, entitled
"The general law village act,"
by amending section 4 of chapter VI and section 1 of chapter VII
(MCL 66.4 and 67.1), section 4 of chapter VI as amended by 1999
PA 259 and section 1 of chapter VII as amended by 1994 PA 314,
and by adding section 1b to chapter VII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VI

Sec. 4. (1) Within 15 days after an ordinance is passed,
the clerk shall publish the ordinance or a synopsis of the ordi-
nance in a newspaper circulated in the village. Immediately
after the ordinance or synopsis of the ordinance is published,
the clerk shall enter in the record of ordinances, in a blank
space to be left for that purpose under the record of the
ordinance, a signed certificate, stating the date on which and

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1 the name of the newspaper in which the ordinance was published.

2 The certificate is prima facie evidence of the publication of the
3 ordinance or the synopsis.

4 (2) A village may adopt a provision of any state statute for
5 which the maximum period of imprisonment is 93 days, the Michigan
6 vehicle code, 1949 PA 300, MCL 257.1 to 257.923, SECTION 5208 OF
7 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5208, SECTION 7 OF
8 1978 PA 33, MCL 722.677, SECTION 465A OF THE MICHIGAN PENAL CODE,
9 1931 PA 328, MCL 750.465A, or a plumbing code, electrical code,
10 mechanical code, fire protection code, building code, or other
11 code promulgated by this state, by a department, board, or other
12 agency of this state, or by an organization or association that
13 is organized or conducted for the purpose of developing a code,
14 by reference to the law or code in an adopting ordinance and
15 without publishing the law or code in full. The law or code
16 shall be clearly identified in the ordinance and a statement of
17 the purpose of the law or code shall be published with the adopt-
18 ing ordinance. Printed copies of the law or code shall be kept
19 in the office of the village clerk available for inspection by or
20 distribution to the public during normal business hours. The
21 village may charge a fee that does not exceed the actual cost for
22 copies of the law or code distributed to the public. The publi-
23 cation in the newspaper shall contain a notice to the effect that
24 a complete copy of the law or code is available for public use
25 and inspection at the office of the village clerk. A village
26 shall not enforce any provision adopted by reference for which
27 the maximum period of imprisonment is greater than 93 days.

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CHAPTER VII

Sec. 1. A village subject to this act has, in addition to other powers that are conferred, the general power and authority granted in this chapter. The council of a village subject to this act may enact ordinances relating to the powers described in this section as it considers proper, including, but not limited to, ordinances relating to 1 or more of the following:

(a) To restrain and prevent vice and immorality.

(b) To punish vagrants, disorderly persons, and prostitutes.

(c) To abate nuisances and preserve the public health.

(d) To prohibit and suppress disorderly houses and gaming houses.

(e) To regulate, license, or suppress billiard tables and ball alleys, public dance halls, and soft drink emporiums.

(f) To suppress gaming.

(g) To regulate and license public shows and exhibitions.

(h) To license auctioneers, license and regulate hawkers and peddlers, to regulate or prohibit sales of property at auction except sales made pursuant to an order of a court or public law, to require transient traders and dealers to obtain a license before engaging in business, and to regulate by ordinance the terms and conditions of issuing those licenses.

(i) To license and regulate hacks and other public vehicles.

(j) To provide for and regulate the inspection of provisions.

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1 (k) To regulate or prohibit bathing in the rivers, ponds,
2 streams, and waters of the village.

3 (l) To regulate or prohibit the selling, storing, or trans-
4 portation of combustible or explosive substances or materials
5 within the village, and to regulate and restrain the making of
6 fires in the streets or other open spaces in the village.

7 (m) To provide for the organization and regulation of a fire
8 department, to provide for the prevention and extinguishment of
9 fires, and to establish and maintain definite fire limits.

10 (n) To license and regulate solicitors for passengers or
11 baggage for any hotel, tavern, public house, boat, or railroad,
12 and draymen, carmen, truckmen, porters, runners, drivers of cabs,
13 hackney coaches, omnibuses, carriages, sleighs, express vehicles,
14 and other vehicles used and employed for hire, and to fix and
15 regulate the amount and rate of compensation of those
16 individuals.

17 (o) To require horses, mules, or other animals attached to
18 any vehicle or standing in any street, lane, or alley in the vil-
19 lage to be securely fastened, hitched, watched, or held.

20 (p) To prevent and punish horse racing and immoderate driv-
21 ing in any street, park, or alley and to authorize the stopping
22 and detaining of any person who is immoderately driving or riding
23 in any street, park, or alley in the village.

24 (q) To prevent the running at large of dogs, to require dogs
25 to be muzzled, and to authorize the destruction of dogs found at
26 large in violation of an ordinance of the village.

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1 (r) To establish lines and grades upon which buildings may
2 be erected, and beyond which buildings shall not extend.

3 (s) To prevent the erection and provide for the removal of
4 buildings considered unsafe.

5 (t) To regulate the placement and provide for the preserva-
6 tion of horse posts or hitching posts.

7 (u) To declare and define the powers and duties of the offi-
8 cers of the village whose powers and duties are not specifically
9 prescribed in this act.

10 (v) To require the treasurer or marshal of the village, and
11 other officers of the village as the council considers proper to
12 give bonds for the discharge of their official duties.

13 (w) To see that the officers of the village perform their
14 duties faithfully and that proper measures are taken to punish
15 neglect of duty by any officer of the village.

16 (x) To provide for the care, custody, and preservation of
17 the public property of the village.

18 (y) To investigate any matter that may come under the juris-
19 diction of the village and that is pursuant to the authority
20 vested in the council or in any officer under this act. The
21 council by majority consent of the council members serving may
22 serve upon a person a subpoena that has been authorized by a
23 court of proper jurisdiction in the county in which the village
24 is located compelling the person to appear before the council or
25 any committee of the council to be examined under oath or to
26 produce a document or object for inspection or copying. If a
27 person objects to or otherwise fails to comply with the written

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1 notice served upon him or her, the council may file in that court
2 an action to enforce the subpoena. The court may issue an order
3 requiring the person to appear to be examined or to produce a
4 document or object for inspection or copying. Failure to obey
5 the order of the court is punishable by the court as a contempt.

6 (z) To adopt other ordinances and make other regulations for
7 the safety and good government of the village and the general
8 welfare of its inhabitants that are not inconsistent with the
9 general laws of this state.

10 (aa) To regulate or prohibit public nudity within village
11 boundaries. As used in this subdivision: ~~-, "public"~~

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

21 (A) ~~(i)~~ A woman's ~~breastfeeding~~ BREAST-FEEDING of a baby
22 whether or not the nipple ~~or areola~~ is exposed during or inci-
23 dental to the feeding.

24 ~~(ii) Material as defined in section 2 of Act No. 343 of the~~
25 ~~Public Acts of 1984, being section 752.362 of the Michigan~~
26 ~~Compiled Laws.~~

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~~(iii) Sexually explicit visual material as defined in section 3 of Act No. 33 of the Public Acts of 1978, being section 722.673 of the Michigan Compiled Laws.~~

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

(C) A DISPLAY OF NUDITY IN A THEATRICAL PRODUCTION THAT IS PERFORMED IN A THEATER BY A PROFESSIONAL OR AMATEUR THEATRICAL OR MUSICAL COMPANY AND THAT HAS SERIOUS LITERARY, ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE.

(D) A DISPLAY OF NUDITY BY A MODEL IN A MODELING CLASS OPERATED BY A PROPRIETARY SCHOOL LICENSED BY THIS STATE, A COLLEGE, JUNIOR COLLEGE, OR UNIVERSITY SUPPORTED ENTIRELY OR PARTLY BY TAXATION, OR A PRIVATE COLLEGE OR UNIVERSITY THAT MAINTAINS AND OPERATES EDUCATIONAL PROGRAMS IN WHICH CREDITS ARE TRANSFERABLE EITHER TO A COLLEGE, JUNIOR COLLEGE, OR UNIVERSITY SUPPORTED ENTIRELY OR PARTLY BY TAXATION OR TO AN ACCREDITED PRIVATE COLLEGE.

(ii) "PUBLIC PLACE" MEANS A LOCATION THAT IS FREQUENTED BY THE PUBLIC, OR WHERE THE PUBLIC IS PRESENT OR LIKELY TO BE PRESENT, OR WHERE A PERSON MAY REASONABLY BE EXPECTED TO BE OBSERVED BY MEMBERS OF THE PUBLIC. PUBLIC PLACE INCLUDES, BUT IS NOT LIMITED TO, STREETS; SIDEWALKS; PARKS; BEACHES; BUSINESS AND COMMERCIAL ESTABLISHMENTS, WHETHER FOR PROFIT OR NOT-FOR-PROFIT AND WHETHER ENTRANCE IS OPEN TO THE PUBLIC AT LARGE OR SUBJECT TO A COVER CHARGE OR MEMBERSHIP REQUIREMENT; BOTTLE CLUBS; HOTELS; MOTELS; RESTAURANTS; NIGHT CLUBS; COUNTRY CLUBS; CABARETS; AND 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 (A) AN ENCLOSED SINGLE SEX PUBLIC REST ROOM.

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

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

8 (D) A DOCTOR'S OFFICE.

9 (E) 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 (F) 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. 1B. THIS STATE HAS AN INTEREST IN ANY COURT PROCEEDING IN
17 WHICH A PLAINTIFF CHALLENGES AN ORDINANCE REGULATING OR PROHIBITING
18 PUBLIC NUDITY THAT IS ADOPTED BY A VILLAGE UNDER THIS SECTION. A
19 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 SECTION DOES NOT EXPAND. RESTRICT. OR OTHERWISE ALTER
THE IMMUNITY FROM LIABILITY GRANTED BY LAW TO A VILLAGE OR THIS
STATE.

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

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1 public nudity that is based upon the ordinance of the city of
2 Erie, Pennsylvania that was the subject of City of Erie v Pap's
3 A.M., 529 US ____; 120 S Ct 1382; 146 L Ed 2d 65; 68 USLW 4239
4 (March 29, 2000).

5 Enacting section 2. This amendatory act takes effect June
6 1, 2001.

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

- 10 (a) Senate Bill No. 1116.
- 11 (b) Senate Bill No. 1293.
- 12 (c) Senate Bill No. 1295.
- 13 (d) Senate Bill No. 1296.
- 14 (e) House Bill No. 4327.
- 15 (f) House Bill No. 5133.
- 16 (g) House Bill No. 5134.