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Senate Bill 1293 (Substitute S-2 as reported by the Committee of the Whole)

Sponsor: Senator Thaddeus G. McCotter

Committee: Judiciary

## **CONTENT**

The bill would amend the Home Rule City Act to provide that the State would have an interest in any court proceeding in which a plaintiff challenged a local ordinance regulating or prohibiting public nudity. A plaintiff who challenged such an ordinance would have to serve notice of the proceeding on the Attorney General, who would have to intervene on behalf of the State. This would not alter the immunity from liability granted by law to a municipality or the State. The bill specifies that the State would recognize a city's authority to prohibit or regulate public nudity, including but not limited to the form of regulation that was upheld by the United States Supreme Court in *City of Erie v Pap's A.M.*, 120 S Ct 1382 (2000). The bill states that it could not be construed to limit a city's authority to enact an ordinance based on the Erie, Pennsylvania, ordinance that was the subject of that case. The bill would take effect on June 1, 2001.

The bill would amend the Act's definition of "public nudity" to refer to the knowing or intentional display of any individual's genitals or anus with less than a fully opaque covering or a female's breast with less than a fully opaque covering of the nipple, in a "public place" or for payment or promise of payment. The bill would exempt a display of nudity by a child under 12; in a theatrical production, performed in a theater by a theatrical or musical company and that had serious literary, artistic, political, or scientific value; or by a model in a modeling class operated by a proprietary school licensed by the State, a tax-supported college, junior college, or university, or a private college or university from which credits were transferable to a tax-supported college, junior college, or university or to an accredited private college.

"Public place" would mean a location that was frequented by the public, or where the public was present or likely to be present, or where a person could reasonably be expected to be observed by members of the public, and would include streets, sidewalks, parks, beaches, business and commercial establishments, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities used by religious, social, fraternal, or similar organizations. It would not include an enclosed, single-sex public rest room; an enclosed, single-sex functional shower, locker room facility, or dressing room facility; an enclosed motel room or hotel room designed and intended as a sleeping accommodation; a doctor's office; any portion of a hospital or similar place in which nudity or exposure was necessarily and customarily expected outside of the home and the sphere of privacy was constitutionally protected; or a family-oriented clothing-optional facility that was licensed by the State.

In addition, the bill would extend a city's authority to adopt, by reference, provisions of certain State statutes, by including the display of sexually explicit material to a minor, as well as proposed sections pertaining to the regulation of adult entertainment establishments.

MCL 117.3 et al.

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

Please see FISCAL IMPACT on Senate Bills 1295 (S-2) through 1297 (S-2).

Date Completed: 11-28-00

Fiscal Analyst: D. Zin