

**SUBSTITUTE FOR
SENATE BILL NO. 1293**

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
by amending sections 3 and 5h (MCL 117.3 and 117.5h), section 3
as amended by 1999 PA 260 and section 5h as amended by 1994 PA
313, and by adding section 5j.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. Each city charter shall provide for all of the
2 following:

3 (a) The election of a mayor, who shall be the chief execu-
4 tive officer of the city, and of a body vested with legislative
5 power, and for the election or appointment of a clerk, a treasur-
6 er, an assessor or board of assessors, a board of review, and
7 other officers considered necessary. The city charter may
8 provide for the selection of the mayor by the legislative body.
9 Elections may be by a partisan, nonpartisan, or preferential

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1 ballot, or by any other legal method of voting. Notwithstanding
2 any other law or charter provision to the contrary, a city having
3 a 1970 official population of more than 150,000, whose charter
4 provides for terms of office of less than 4 years, and in which
5 the term of office for the mayor and the governing body are of
6 the same length, may provide by ordinance for a term of office of
7 up to 4 years for mayor and other elected city officials. The
8 ordinance shall provide that the ordinance shall take effect 60
9 days after it is enacted unless within the 60 days a petition is
10 submitted to the city clerk signed by not less than 10% of the
11 registered electors of the city requesting that the question of
12 approval of the ordinance be submitted to the electors at the
13 next regular election or a special election called for the pur-
14 pose of approving or disapproving the ordinance.

15 (b) The nomination of elective officers by partisan or non-
16 partisan primary, by petition, or by convention.

17 (c) The time, manner, and means of holding elections and the
18 registration of electors.

19 (d) The qualifications, duties, and compensation of the
20 city's officers. If the city has an appointed chief administra-
21 tive officer, the legislative body of the city may enter into an
22 employment contract with the chief administrative officer extend-
23 ing beyond the terms of the members of the legislative body
24 unless such an employment contract is prohibited by the city
25 charter. An employment contract with a chief administrative
26 officer shall be in writing and shall specify the compensation to
27 be paid to the chief administrative officer, any procedure for

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1 changing the compensation, any fringe benefits, and any other
2 conditions of employment. The contract shall state if the chief
3 administrative officer serves at the pleasure of the legislative
4 body, and the contract may provide for severance pay or other
5 benefits in the event the chief administrative officer's employ-
6 ment is terminated at the pleasure of the legislative body.

7 (e) The establishment of 1 or more wards, and if the members
8 of the city's legislative body are chosen by wards, for equal
9 representation for each ward in the legislative body.

10 (f) That the subjects of taxation for municipal purposes are
11 the same as for state, county, and school purposes under the gen-
12 eral law.

13 (g) The annual laying and collecting OF taxes in a sum,
14 except as otherwise provided by law, not to exceed 2% of the tax-
15 able value of the real and personal property in the city. Unless
16 the charter provides for a different tax rate limitation, the
17 governing body of a city may levy and collect taxes for municipal
18 purposes in a sum not to exceed 1% of the taxable value of the
19 real and personal property in the city, subject to section 1a of
20 chapter VII of the municipal finance act, 1943 PA 202, MCL
21 137.1a. As used in this subdivision, "taxable value" is that
22 value determined under section 27a of the general property tax
23 act, 1893 PA 206, MCL 211.27a.

24 (h) An annual appropriation of money for municipal
25 purposes.

26 (i) The levy, collection, and return of state, county, and
27 school taxes in conformance with the general laws of this state,

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1 except that the preparation of the assessment roll, the meeting
2 of the board of review, and the confirmation of the assessment
3 roll may be at the times provided in the city charter.

4 (j) The public peace and health and for the safety of per-
5 sons and property. In providing for the public peace, health,
6 and safety, a city may expend funds or enter into contracts with
7 a private organization, the federal or state government, a
8 county, village, or township, or another city for services con-
9 sidered necessary by the legislative body. Public peace, health,
10 and safety services may include the operation of child guidance
11 and community mental health clinics, the prevention, counseling,
12 and treatment of developmental disabilities, the prevention of
13 drug abuse, and the counseling and treatment of drug abusers.

14 (k) Adopting, continuing, amending, and repealing the city
15 ordinances and for the publication of each ordinance before it
16 becomes operative. Whether or not provided in its charter,
17 instead of publishing a true copy of an ordinance before it
18 becomes operative, the city may publish a summary of the
19 ordinance. If the city publishes a summary of the ordinance, the
20 city shall include in the publication the designation of a loca-
21 tion in the city where a true copy of the ordinance can be
22 inspected or obtained. ~~Any charter provision to the contrary~~
23 ~~notwithstanding, a city may adopt an ordinance punishable by~~
24 ~~imprisonment for not more than 93 days or a fine of not more than~~
25 ~~\$500.00, or both, if the violation substantially corresponds to a~~
26 ~~violation of state law that is a misdemeanor for which the~~
27 ~~maximum period of imprisonment is 93 days. Whether or not~~

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1 ~~provided in its charter, a city may adopt a provision of any~~
2 ~~state statute for which the maximum period of imprisonment is 93~~
3 ~~days, the Michigan vehicle code, 1949 PA 300, MCL 257.1 to~~
4 ~~257.923, or a law, code, or rule that has been promulgated and~~
5 ~~adopted by an authorized agency of this state pertaining to fire,~~
6 ~~fire hazards, fire prevention, or fire waste, and a fire preven-~~
7 ~~tion code, plumbing code, heating code, electrical code, building~~
8 ~~code, refrigeration machinery code, piping code, boiler code,~~
9 ~~boiler operation code, elevator machinery code, or a code per-~~
10 ~~taining to flammable liquids and gases or hazardous chemicals,~~
11 ~~that has been promulgated by this state, by a department, board,~~
12 ~~or other agency of this state, or by an organization or associa-~~
13 ~~tion that is organized and conducted for the purpose of develop-~~
14 ~~ing the code, by reference to the law, code, or rule in an adopt-~~
15 ~~ing ordinance and without publishing the law, code, or rule in~~
16 ~~full. The law, code, or rule shall be clearly identified in the~~
17 ~~ordinance and its purpose shall be published with the adopting~~
18 ~~ordinance. Printed copies of the law, code, or rule shall be~~
19 ~~kept in the office of the city clerk, available for inspection~~
20 ~~by, and distribution to, the public at all times. The publica-~~
21 ~~tion shall contain a notice stating that a complete copy of the~~
22 ~~law, code, or rule is made available to the public at the office~~
23 ~~of the city clerk in compliance with state law requiring that~~
24 ~~records of public bodies be made available to the general~~
25 ~~public. A city shall not enforce any provision adopted by refer-~~
26 ~~ence for which the maximum period of imprisonment is greater than~~
27 ~~93 days.~~

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1 (l) That the business of the legislative body shall be
2 conducted at a public meeting held in compliance with the open
3 meetings act, 1976 PA 267, MCL 15.261 to 15.275. All records of
4 the municipality shall be made available to the general public in
5 compliance with the freedom of information act, 1976 PA 442, MCL
6 15.231 to 15.246.

7 (m) Keeping in the English language a written or printed
8 journal of each session of the legislative body.

9 (n) A system of accounts that conforms to a uniform system
10 of accounts as required by law.

11 Sec. 5h. (1) Whether or not so provided in its charter, a
12 city may, by ordinance, regulate or prohibit public nudity within
13 city boundaries.

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

22 (3) ~~-(2)-~~ As used in this section: ~~—, "public"~~

23 (A) "PUBLIC nudity" means ~~—knowingly or intentionally~~
24 ~~displaying~~ THE KNOWING OR INTENTIONAL DISPLAY in a public place,
25 or for payment or promise of payment by any person including, but
26 not limited to, payment or promise of payment of an admission
27 fee, ~~any~~ BY AN INDIVIDUAL OF THAT individual's genitals or anus
28 with less than a fully opaque covering ~~—~~ or a female
29 individual's breast with less than a fully opaque covering of the
30 nipple. ~~and areola.~~ PUBLIC NUDITY DOES NOT INCLUDE ANY OF THE
31 FOLLOWING:

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1 (i) A mother's ~~breastfeeding~~ BREAST-FEEDING of ~~her baby~~
2 ~~does not under any circumstances constitute nudity irrespective~~
3 ~~of~~ A BABY whether or not the nipple is covered during or inci-
4 dental to the feeding.

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. 5J. ANY CHARTER PROVISION TO THE CONTRARY NOTWITH-
17 STANDING, A CITY MAY ADOPT AN ORDINANCE PUNISHABLE BY IMPRISON-
18 MENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
19 \$500.00, OR BOTH, IF THE VIOLATION SUBSTANTIALLY CORRESPONDS TO A
20 VIOLATION OF STATE LAW THAT IS A MISDEMEANOR FOR WHICH THE MAXI-
21 MUM PERIOD OF IMPRISONMENT IS 93 DAYS. WHETHER OR NOT PROVIDED
22 IN ITS CHARTER, A CITY MAY ADOPT A PROVISION OF ANY STATE STATUTE
23 FOR WHICH THE MAXIMUM PERIOD OF IMPRISONMENT IS 93 DAYS, THE
24 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1 TO 257.923, SECTION
25 5208 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5208, SEC-
26 TION 7 OF 1978 PA 33, MCL 722.677, SECTION 465A OF THE MICHIGAN
27 PENAL CODE, 1931 PA 328, MCL 750.465A, OR A LAW, CODE, OR RULE

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1 THAT HAS BEEN PROMULGATED AND ADOPTED BY AN AUTHORIZED AGENCY OF
2 THIS STATE PERTAINING TO FIRE, FIRE HAZARDS, FIRE PREVENTION, OR
3 FIRE WASTE, AND A FIRE PREVENTION CODE, PLUMBING CODE, HEATING
4 CODE, ELECTRICAL CODE, BUILDING CODE, REFRIGERATION MACHINERY
5 CODE, PIPING CODE, BOILER CODE, BOILER OPERATION CODE, ELEVATOR
6 MACHINERY CODE, OR A CODE PERTAINING TO FLAMMABLE LIQUIDS AND
7 GASES OR HAZARDOUS CHEMICALS, THAT HAS BEEN PROMULGATED BY THIS
8 STATE, BY A DEPARTMENT, BOARD, OR OTHER AGENCY OF THIS STATE, OR
9 BY AN ORGANIZATION OR ASSOCIATION THAT IS ORGANIZED AND CONDUCTED
10 FOR THE PURPOSE OF DEVELOPING THE CODE, BY REFERENCE TO THE LAW,
11 CODE, OR RULE IN AN ADOPTING ORDINANCE AND WITHOUT PUBLISHING THE
12 LAW, CODE, OR RULE IN FULL. THE LAW, CODE, OR RULE SHALL BE
13 CLEARLY IDENTIFIED IN THE ORDINANCE AND ITS PURPOSE SHALL BE PUB-
14 LISHED WITH THE ADOPTING ORDINANCE. PRINTED COPIES OF THE LAW,
15 CODE, OR RULE SHALL BE KEPT IN THE OFFICE OF THE CITY CLERK,
16 AVAILABLE FOR INSPECTION BY, AND DISTRIBUTION TO, THE PUBLIC AT
17 ALL TIMES. THE PUBLICATION SHALL CONTAIN A NOTICE STATING THAT A
18 COMPLETE COPY OF THE LAW, CODE, OR RULE IS MADE AVAILABLE TO THE
19 PUBLIC AT THE OFFICE OF THE CITY CLERK IN COMPLIANCE WITH STATE
20 LAW REQUIRING THAT RECORDS OF PUBLIC BODIES BE MADE AVAILABLE TO
21 THE GENERAL PUBLIC. A CITY SHALL NOT ENFORCE ANY PROVISION
22 ADOPTED BY REFERENCE FOR WHICH THE MAXIMUM PERIOD OF IMPRISONMENT
23 IS GREATER THAN 93 DAYS.

24 Enacting section 1. The authority of a home rule city to
25 prohibit or regulate public nudity including, but not limited to,
26 the form of regulation that was upheld by the United States
27 Supreme Court in City of Erie v Pap's A.M., 529 US ____; 120

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

9 Enacting section 2. This amendatory act takes effect June
10 1, 2001.

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

14 (a) Senate Bill No. 1116.

15 (b) Senate Bill No. 1295.

16 (c) Senate Bill No. 1296.

17 (d) Senate Bill No. 1297.

18 (e) House Bill No. 4327.

19 (f) House Bill No. 5133.

20 (g) House Bill No. 5134.