

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ON BILL 28-20 -
HUMAN RIGHTS AND CIVIL LIBERTIES - DISCRIMINATION IN PUBLIC
ACCOMMODATIONS - LGBTQ BILL OF RIGHTS**

President Katz, Vice-President Hucker and distinguished members of Council, first we wish to thank you for allowing this opportunity to speak about this very important issue. We are here to speak on behalf of the County Executive in support of Council Bill 28-20 Human Rights and Civil Liberties- Discrimination in Public Accommodation-LGBTQ Bill of Rights. The proposed law would prohibit certain discriminatory practices against certain individuals in places of public accommodation, including nursing homes and other facilities and required the posting of certain anti-discriminatory notices to individuals. Further the proposed measure would define and prohibit certain discriminatory practices based on sexual orientation, gender expression, gender identity, and HIV status in places of public accommodation.

As you may be aware, under current law it already illegal for an owner or operator of a place of a of public accommodation to discrimination against an individual based upon sexual orientation or gender identity. The further expansion of the law to gender expression and or HIV status would provide protections for another very vulnerable and often targeted segment of our community, so therefore I am supportive of this proposed legislation.

There are however a couple of points I want to make sure County Council weighs in its decision on passage of this law.

The first is a point of potential First Amendment freedom of speech concerns. Section 27-11A(c)5 and Section 27-11 A (d) and (e) are the sections in question. Proposed section 27-11A(c) outlines discriminatory practices made by an owner, lessee, operator, manager, agent, or employee of any care facility in the County. These discriminatory practices include, under Section 27-11 A (c) 5, when one of these persons “willfully and repeatedly fails to use an individual’s name or pronoun after being clearly informed of the name or pronouns.” Proposed sections 27-11A (d) and (e) require the care facility to post notice that: (1) the facility does not discriminate or allow discrimination based on sexual orientation, gender identity, gender expression, or HIV status or due to association with one of these protected persons; and (2) information about filing a complaint of discrimination with the Human Rights Commission. This notice must also be included with any materials describing the care facility’s nondiscrimination policies.

In order to make these sections more defensible to any possible First Amendment challenges and to ensure that these sections would be upheld against such challenges, the County Attorney’s Office recommends two changes.

First, amend section 27-11 A 9(c) 5 to add...making it a violation if the speaker “willfully and repeatedly, with the intent to humiliate, fails to use an individual’s name or pronoun after being clearly informed of the name or pronouns.”

Second, amend section 27-11 A (e) to “the notice required under subsection (d) must include (1) a statement that the law prohibits discrimination, including bullying, abuse, or harassment, on the basis of...” Should there be specific questions I have asked the County Attorney to be available at the public hearing to offer additional reasoning for these suggested changes per your request.

The second point is a familiar one and while we believe this law will provide needed protection for members of our community; it will potentially create more complaints for the Office of Human Rights and the matter the concerns of businesses, service providers and employers that new human rights laws however justifiable may seem like a continuing interference in management of the workplace and may be viewed by employers as overreaching by government. We believe however in this instance this law will help provide a marketplace and workplace free of discrimination allowing an environment that is productive for all employees and accessible to all seeking public services.

If approved, the Office of Human Rights would address complaints as directed by the provisions of the law. The Office of Human Rights would also provide support for technical questions that might arise from employers, employees and service providers. However, this additional responsibility and potential increase in number of complaints will put additional strain on the agency’s current staffing levels. We must include considerations for additional staff resources to be determined by the Office of Human Rights.

We are in support of the passage of this law. Thank you for the opportunity to share these comments and observations