



Committee: HHS
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #LGBTQrights

AGENDA ITEM #6
July 28, 2020
Public Hearing

SUBJECT

Bill 28-20, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights

Lead Sponsor: Councilmember Glass

Co-Sponsors: Council President Katz, Councilmember Jawando, Council Vice-President Hucker, Councilmembers Riemer, Albornoz, Friedson, Navarro and Rice

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Public Hearing-No Council vote required

DESCRIPTION/ISSUE

Bill 28-20, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights, would prohibit discriminatory practices against certain individuals in places of public accommodation, including nursing homes and other facilities, and require certain notices to individuals.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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MEMORANDUM

July 23, 2020

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 28-20, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights

PURPOSE: Public Hearing – no Council votes required

Bill 28-20, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights, sponsored by Lead Sponsor Councilmember Glass and Co-Sponsors Council President Katz, Councilmember Jawando, Council Vice-President Hucker, and Councilmembers Riemer, Albornoz, Friedson, Navarro and Rice, was introduced on July 7, 2020.¹ A Health and Human Services Committee worksession is tentatively scheduled for September 24.

Bill 28-20 would define and prohibit certain discriminatory practices based upon sexual orientation, gender expression, gender identity, and HIV status in places of public accommodation, including nursing homes and other healthcare and personal care facilities. The bill also would require the posting of certain anti-discrimination notices.

BACKGROUND

Under current County law, it is illegal for an owner or operator of a place of public accommodation to discriminate against individuals based upon sexual orientation or gender identity. Bill 28-20 would expand upon the current law to outlaw discrimination in public accommodations based upon an individual’s gender expression or HIV status. In addition, the bill would delineate certain practices in nursing homes or other care facilities that would constitute prohibited discrimination on the basis of sexual orientation, gender identity, gender expression, or HIV status.

SPECIFICS OF THE BILL

Under Bill 28-20, an “owner, lessee, operator, manager, agent, or employee of any place of public accommodation in the County” would be prohibited from discriminating against individuals based -- not only upon “race, color, sex, marital status, religious creed, ancestry, national origin, disability, sexual orientation, or gender identity” – but also upon “gender expression” or HIV status. “Gender expression” would include “gender as expressed by an individual’s name, pronouns, clothing, hairstyle, behavior, voice, or similar characteristics”.

The bill would identify certain practices in nursing homes or other healthcare or personal care facilities that constitute prohibited discrimination, including when an owner, lessee, operator, manager, agent, or employee of the facility:

¹#LGBTQrights

- (1) denies admission to a facility, transfers or refuses to transfer the individual within a facility or to another facility, or discharges or evicts an individual from a facility;
- (2) denies a request by individuals to share a room in a facility;
- (3) if rooms are assigned by gender, assigns, reassigns, or refuses to assign a room to a transgender individual other than in accordance with the individual's gender identity, unless at the individual's request;
- (4) prohibits an individual from using, or harasses an individual who seeks to use or does use, a restroom available to other individuals of the same gender identity, regardless of whether the individual is making a gender transition or appears to be gender-nonconforming;
- (5) willfully and repeatedly fails to use an individual's name or pronouns after being clearly informed of the name or pronouns;
- (6) denies an individual the right to wear or be dressed in clothing, accessories, or cosmetics that are allowed for any other individual;
- (7) restricts an individual's right to associate with other individuals, including the right to consensual sexual relations, unless the restriction uniformly applies to all individuals in a nondiscriminatory manner;
- (8) denies or restricts medical or nonmedical care; or
- (9) provides medical or nonmedical care in a manner that, to a similarly situated reasonable individual, unduly demeans the individual's dignity or causes avoidable discomfort.

The bill also would require the posting of "a statement that the facility does not discriminate or allow discrimination, including bullying, abuse, or harassment, on the basis of:

- (A) actual or perceived sexual orientation, gender identity, gender expression, or HIV status; or
- (B) an association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, or HIV status...."

The requirements of the bill would be enforced by the Office and the Commission on Human Rights under Chapter 27 of the County Code.

This packet contains:

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Bill No. 28-20
Concerning: Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights
Revised: 06/29/2020 Draft No. 5
Introduced: July 7, 2020
Expires: January 7, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Glass
Co-Sponsors: Council President Katz, Councilmember Jawando, Council Vice-President Hucker,
Councilmembers Riemer, Albornoz, Friedson, Navarro and Rice

AN ACT to:

- (1) prohibit discriminatory practices against certain individuals in places of public accommodation, including nursing homes and other facilities;
- (2) require certain notices to individuals; and
- (3) generally amend the laws regarding prohibited discrimination in places of public accommodation.

By amending

Chapter 27, Human Rights and Civil Liberties
Sections 27-6, 27-10, and 27-11

By adding

Chapter 27, Human Rights and Civil Liberties
Section 27-11A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 27-6, 27-10, and 27-11 are amended, and Section 27-11A is added, as follows:

27-6. Definitions.

The following words and phrases have the following meanings, unless the context indicates otherwise:

* * *

Family responsibilities means the state of being financially or legally responsible for the support or care of a person or persons, regardless of the number of dependent persons or the age of any dependent person.

Gender expression includes gender as expressed by an individual’s name, pronouns, clothing, hairstyle, behavior, voice, or similar characteristics.

Gender identity means an individual’s actual or perceived gender, including a person’s gender-related appearance, expression, image, identity, or behavior, whether or not those gender-related characteristics differ from the characteristics customarily associated with the person’s assigned sex at birth.

Gender-nonconforming means gender expression that does not conform to stereotypical expectations of how a male or female should appear or act.

* * *

Source of income means any lawful source of money, paid directly or indirectly to a renter or buyer of housing, including income from:

- (1) any lawful profession or occupation;
- (2) any government or private assistance, grant, or loan program;
- (3) any gift, inheritance, pension, annuity, alimony, child support, or other lawful compensation or benefit; or
- (4) any sale or pledge of any property or interest in property.

Transgender individual means an individual whose gender identity differs from the individual’s assigned or presumed sex at birth.

28 *Undue hardship* means an action requiring significant difficulty or expense. In
 29 determining whether an accommodation would impose an undue hardship, the
 30 decision maker must consider:

- 31 (1) the nature and cost of the accommodation needed to comply with
 32 this article;
- 33 (2) the overall financial resources of the person who would provide
 34 the accommodation; and
- 35 (3) the impact of the accommodation on other persons.

36 * * *

37 **27-10. Scope.**

38 (a) This division applies to every public accommodation of any kind in the
 39 County whose facilities, accommodations, services, commodities, or use
 40 are offered to or enjoyed by the general public either with or without
 41 charge, such as:

- 42 (1) restaurants, soda fountains, and other eating or drinking places,
 43 and all places where food is sold for consumption either on or off
 44 the premises;
- 45 (2) inns, hotels, and motels, whether serving temporary or permanent
 46 patrons;
- 47 (3) retail stores and service establishments;
- 48 (4) hospitals, health care institutions, domiciliary care homes, nursing
 49 homes, personal care homes, and clinics;
- 50 (5) motion picture, stage, and other theaters and music, concert, or
 51 meeting halls;
- 52 (6) circuses, exhibitions, skating rinks, sports arenas and fields,
 53 amusement or recreation parks, picnic grounds, fairs, bowling

- 54 alleys, golf courses, gymnasiums, shooting galleries, billiard and
 55 pool rooms, and swimming pools;
- 56 (7) public conveyances, such as automobiles, buses, taxicabs, trolleys,
 57 trains, limousines, boats, airplanes, and bicycles;
- 58 (8) utilities, such as water and sewer service, electricity, telephone,
 59 and cable television;
- 60 (9) streets, roads, sidewalks, other public rights-of-way, parking lots
 61 or garages, marinas, airports, and hangars; and
- 62 (10) places of public assembly and entertainment of every kind.

63 **27-11. Discriminatory practices – in general.**

64 (a) An owner, lessee, operator, manager, agent, or employee of any place of
 65 public accommodation in the County must not, with respect to the
 66 accommodation:

67 (1) make any distinction with respect to any person based on race,
 68 color, sex, marital status, religious creed, ancestry, national origin,
 69 disability, sexual orientation, gender expression, HIV status, or
 70 gender identity in connection with:

71 (A) admission;

72 (B) service or sales; or

73 (C) price, quality, or use of any facility or service;

74 (2) display, circulate or publicize or cause to be displayed, circulated
 75 or publicized, directly or indirectly, any notice, communication, or
 76 advertisement that states or implies:

77 (A) any distinction in the availability of any facility, service,
 78 commodity, or activity related to the accommodation that
 79 would violate paragraph (1), or

80 (B) that the patronage or presence of any person is unwelcome,
81 objectionable, unacceptable, or not desired or solicited on
82 account of any person’s race, color, sex, marital status,
83 religious creed, ancestry, national origin, disability, sexual
84 orientation, gender expression, HIV status, or gender
85 identity;

86 * * *

87 **27-11A. Discriminatory practices – specific protections for LGBTQ individuals**
88 **in care facilities.**

89 (a) *Legislative findings and statement of policy.*

90 (1) The County has a goal to ensure that every resident can live
91 without fear of discrimination based on sex—including on the
92 basis of gender identity or sexual orientation. To achieve this goal
93 the county will:

94 (A) protect LGBTQ community members from discrimination
95 in all public facilities, including health and personal care
96 facilities;

97 (B) ensure medical providers respect the gender identity and
98 pronouns of all patients;

99 (C) strengthen access to care facilities for sexual minorities and
100 all gender identities; and

101 (D) ensure that all public accommodations in Montgomery
102 County adhere to non-discrimination laws;

103 (2) The County Council finds that ending and preventing harassment
104 among LGBTQ individuals requires substantial coordination and
105 cooperation among federal, state, and local governments, as well
106 as private sector service providers and community organizations.

107 (b) Definitions. In this Section, the following terms have the meanings
108 indicated.

109 Care facility or facility means a place of public accommodation that
110 provides direct personal care or health care to individuals, such as a
111 hospital, clinic, nursing home, domiciliary care home, or personal care
112 home.

113 Harass includes requiring an individual to show identity documents to
114 gain entrance to a restroom available to other individuals of the same
115 gender identity.

116 (c) Discriminatory practices prohibited under Section 27-11 include when an
117 owner, lessee, operator, manager, agent, or employee of any care facility
118 in the County, based on an individual's sexual orientation, gender
119 identity, gender expression, or HIV status:

120 (1) denies admission to a facility, transfers or refuses to transfer the
121 individual within a facility or to another facility, or discharges or
122 evicts an individual from a facility;

123 (2) denies a request by individuals to share a room in a facility;

124 (3) if rooms are assigned by gender, assigns, reassigns, or refuses to
125 assign a room to a transgender individual other than in accordance
126 with the individual's gender identity, unless at the individual's
127 request;

128 (4) prohibits an individual from using, or harasses an individual who
129 seeks to use or does use, a restroom available to other individuals
130 of the same gender identity, regardless of whether the individual is
131 making a gender transition or appears to be gender-
132 nonconforming;

- 133 (5) willfully and repeatedly fails to use an individual's s name or
 134 pronouns after being clearly informed of the name or pronouns;
- 135 (6) denies an individual the right to wear or be dressed in clothing,
 136 accessories, or cosmetics that are allowed for any other individual;
- 137 (7) restricts an individual's right to associate with other individuals,
 138 including the right to consensual sexual relations, unless the
 139 restriction uniformly applies to all individuals in a
 140 nondiscriminatory manner;
- 141 (8) denies or restricts medical or nonmedical care; or
- 142 (9) provides medical or nonmedical care in a manner that, to a
 143 similarly situated reasonable individual, unduly demeans the
 144 individual's dignity or causes avoidable discomfort.
- 145 (d) Notice requirements. A facility must post prominently, and must include
 146 with any materials that describe the facility's nondiscrimination policies,
 147 a notice that:
- 148 (1) meets the requirements of subsection (e); and
- 149 (2) is in a form prescribed by the Director.
- 150 (e) The notice required under subsection (d) must include:
- 151 (1) a statement that the facility does not discriminate or allow
 152 discrimination, including bullying, abuse, or harassment, on the
 153 basis of:
- 154 (A) actual or perceived sexual orientation, gender identity,
 155 gender expression, or HIV status; or
- 156 (B) an association with another individual on account of that
 157 individual's actual or perceived sexual orientation, gender
 158 identity, gender expression, or HIV status; and

159 (2) information about filing a complaint with the Commission on
160 Human Rights.

LEGISLATIVE REQUEST REPORT

Bill 28-20

*Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ
Bill of Rights*

DESCRIPTION: Bill 28-20 would prohibit discriminatory practices against certain individuals in places of public accommodation, including nursing homes and other facilities, and would require certain notices to individuals.

PROBLEM: Discriminatory practices on the basis of sexual orientation, gender identity, gender expression, and HIV status in nursing homes and other places of public accommodation.

GOALS AND OBJECTIVES: Prohibit certain discriminatory acts on the basis of sexual orientation, gender identity, gender expression, or HIV status.

COORDINATION: Office of Human Rights

FISCAL IMPACT: OMB

ECONOMIC IMPACT: OLO

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: District of Columbia

SOURCE OF INFORMATION: Christine Wellons, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: Civil penalties under County Code, Section 27-8

Economic Impact Statement

Office of Legislative Oversight

Bill 28-20

Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights

SUMMARY

Overall, the Office of Legislative Oversight (OLO) expects Bill 28-20 to have a negligible impact on the Montgomery County economy.

BACKGROUND

Current law prohibits an owner or operator of a place of public accommodation from discriminating against individuals based on their sexual orientation or gender identity.¹ Bill 28-20 would expand the scope of anti-discrimination protections to include HIV status and “gender expression,” which the bill defines as “gender as expressed by an individual’s name, pronouns, clothing, hairstyle, behavior, voice, or similar characteristics.”² Moreover, the bill identifies practices that would be prohibited in “care facilities” (i.e. public accommodations that provide “direct personal care or health care to individuals, such as a hospital, clinic, nursing home, domiciliary care home, or personal care home”).³ These care facilities must also post notices and update materials that describe their nondiscrimination policies.⁴

INFORMATION, ASSUMPTIONS and METHODOLOGIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

VARIABLES

The variables that could affect the economic impacts of Bill 28-20 in the County are the following:

- Costs associated with training staff and updating materials (e.g. signs, brochures) on the new anti-discrimination protections
- Revenue generated from local businesses that produce signs, brochures, etc.
- Loss of customers due to discriminatory behavior by employees and owners
- Legal costs and settlements associated with gender expression discrimination lawsuits

¹ Christine Wellons, Memorandum, Bill 28-20, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights, July 2, 2020, Montgomery County Council, Montgomery County, Maryland, 1.

² Montgomery County Council, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights, Introduced on July 7, 2020, Montgomery County, Maryland, 2.

³ Ibid, 6.

⁴ Ibid, 7.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

OLO believes that Bill 28-20 would have a negligible impact on private organizations in the County. Training staff and updating materials on the new anti-discrimination protections could result in short-term increases in operating costs for care facilities and other businesses. Also, expanding the scope of behavior prohibited under anti-discrimination law could result in increased legal costs for businesses that face lawsuits for gender expression discrimination. However, these potential costs to private organizations could be offset by businesses that retain customers who would otherwise patronize other establishments due to discriminatory behavior by owners and employees. Moreover, businesses that produce signs, brochures, and other communication materials may see short-term revenue increases from organizations that need updated materials. OLO sees no direct connection between the bill and the Council's other priority indicators, namely property values, capital investment, taxation policy, economic development, and competitiveness.

Residents

Workforce, property values, income, taxation policy, economic development, etc.

OLO believes that Bill 28-20 would have a minimal economic impact on County residents overall. The bill could reduce income costs to workers who experience gender expression discrimination. OLO sees no significant connection between the bill and property values, taxes paid, and the Council's other priority indicators.

WORKS CITED

Wellons, Christine. Memorandum, Bill 28-20, Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights. July 2, 2020. Montgomery County Council. Montgomery County, Maryland.

Montgomery County Council. Human Rights and Civil Liberties – Discrimination in Public Accommodations – LGBTQ Bill of Rights. Introduced on July 7, 2020. Montgomery County, Maryland.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent the OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

This economic impact statement was drafted by Stephen Roblin (OLO).