

Local Law Number 7 Of 2023

County of Ulster

A Local Law Amending Chapter 216 Of The Code Of The County Of Ulster, Human Rights, In Relation To Gender Expression

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE.

This Local Law shall be known by and may be cited as the “Drag is Not a Crime Act.”

SECTION 2. LEGISLATIVE INTENT.

The intention of the Drag is Not a Crime Act is to broaden the scope of the Ulster County Human Rights Law to include gender expression as a protected class, and to assist those who have been discriminated against in obtaining justice.

The already vulnerable populations of Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and Asexual+ (2SLGBTQIA+) individuals have fallen under attack with introduction of discriminatory legislation across the United States. The American Civil Liberties Union has identified the introduction of 452 anti-2SLGBTQIA+ bills in 2023, with more introduced every day, endangering the health, safety and well-being of non-heterosexual and gender non-conforming individuals.

Bans on drag constitute sex discrimination because they single out gender non-conforming individuals. The State of Tennessee has adopted SB0003: An Act to Amend Tennessee Code Annotated, Title 7, Chapter 51, Part 14, relative to adult-oriented performances, taking effect on July 1, 2023. Legislation such as SB0003, regulating gender expression and gender identity, infringes on Title VII of the Civil Rights Act of 1964 which makes it unlawful for an employer to discriminate against someone because of sex including sexual orientation and gender identity. Numerous federal courts have ruled that federal sex discrimination laws – including the landmark Title VII employment law, the Title IX education law, the Fair Housing Act, the Equal Credit Opportunity Act, and Section 1557 of the Affordable Care Act – apply to discrimination against transgender, lesbian, gay, bisexual, and gender non-conforming persons.

Moreover, live entertainment is protected under the First Amendment as a form of free expression. Legislation regulating gender expression duly infringes on the First Amendment of the United States Constitution through its intention of censorship and prohibition of the free exercise of speech. Drag is both artistic and political expression.

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The Ulster County Legislature deems restrictive laws condemning freedom of speech and artistic expression as needless, excessive, unconstitutional, and a legislative overreach.

Anti-drag legislation not only infringes on the first amendment rights of individuals, but also upon those who choose to view and appreciate this critical artist expression. Parents have the right to decide whether or not a performance is age appropriate for their children. Performers have the right to assemble and perform, and audiences have the right to assemble and view performances. The Ulster County Legislature recognizes the first amendment rights of freedom of speech and artistic expression as it applies to drag performance.

The Ulster County Legislature remains committed to supporting the safety and well-being of all residents, including the 2SLGBTQIA+ community. As such, the Legislature deems it necessary and appropriate to preserve and guarantee the right of individual gender expression in Ulster County by adopting the Drag is Not a Crime Act.

SECTION 3. § 216-2, Legislative Intent and Findings, of the Code of the County of Ulster shall be amended as follows:

A. The Ulster County Legislature hereby finds and declares that the County has the responsibility to act to assure that every individual within the County is afforded certain basic rights and freedoms to which all human beings are entitled, including but not limited to the right to life and liberty, freedom of thought and expression, and equality before the law.

B. The Ulster County Legislature recognizes, finds and determines that the laws and regulations of the United States of America and the State of New York prohibit acts of discrimination, including discrimination in employment, discrimination in public accommodations, resort and amusement, discrimination in housing accommodation, discrimination in commercial space and land transactions, and discrimination in the issuing of credit based upon impermissible considerations relating to a person's race, color, religion, ethnicity, creed, age, national origin, alienage or citizenship status, familial status, gender, including gender identity, gender expression, gender

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dysphoria, transgender status, group identity, marital status, sexual orientation or disability.

C. In enacting this chapter, the County is acting to empower its citizens and to provide local assurances for the safeguarding of basic rights and freedoms and the prevention of unlawful acts of discrimination. The Ulster County Legislature finds that the adoption of this chapter is an appropriate exercise of the police power for the protection of the public welfare, health and peace of the people of this County.

D. Article XXX of the Ulster County Charter ("Charter") provides for the establishment of a Commission of Human Rights in and for Ulster County ("Commission"). Section C-102 of the Ulster County Charter provides that "The Commission of Human Rights shall have all of the authority, responsibility, obligations, powers and duties set forth in Article 12-D of the General Municipal Law and shall also have the authority to create bylaws for its own governance, proceedings and activities."

E. The Commission exists to foster mutual respect for the rights of all citizens and to explore opportunities for improving relations among all people of Ulster County. Pursuant to Article 12-D of the General Municipal Law, the Commission is empowered to, among other things, seek the active assistance of the New York State Division of Human Rights ("State Division") in the solution of complaints which fall within the jurisdiction of the State Division (G.M.L. § 239-r) and where and to the extent authorized by local law, to report, but not initiate, any such complaints to the State Division [G.M.L. § 239-q(2)(a)].

F. The Ulster County Legislature specifically finds and declares that it is in the interest of the County to encourage its citizens to reason together to reduce tensions within the many diverse communities in Ulster County arising from alleged acts of discrimination, prejudice and intolerance by resort to the Commission, or its authorized designee, through a process of conference, conciliation and persuasion at the local level, and that it is imperative to include within the duties and responsibilities of the Commission, or its authorized designee, the task of actively monitoring and assisting persons through the process administered by the State Division for such claimed human rights violations that have not been successfully resolved by the Commission, or its authorized designee, at the local level through mediation and conciliation.

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G. The Ulster County Legislature's intent in creating this chapter is to empower the Ulster County Human Rights Commission pursuant to Article 12-D of the General Municipal Law to engage in processes of conference, conciliation and persuasion, with the active assistance of the State Division, if needed, in the solution of complaints which fall within the jurisdiction of the State Division, including those complaints within the scope of State Regulation 9 NYCRR § 466.13 pertaining to gender identity, gender expression, transgender persons, and gender dysphoria, as such terms are defined by the state regulation, so as to amicably resolve such complaints, reduce tensions, build consensus and foster harmony between the various diverse communities within Ulster County, and to otherwise report, but not initiate, such complaints to the State Division, and to include within the duties and responsibilities of the Commission, or its authorized designee, the task of actively monitoring and assisting persons with claimed human rights violations through the process administered by the State Division or the Hearing Officer for such claims that have not been successfully resolved by the Commission, or its authorized designee, through mediation and conciliation, or where a respondent has refused mediation and conciliation.

SECTION 4. DEFINITION.

§ 216-3, Definitions. of the Code of the County of Ulster shall be amended to include the following definition:

GENDER EXPRESSION shall be defined as how a person publicly expresses or presents their gender. This can include behavior and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.

SECTION 5. SEVERABILITY.

In the event that any portion of this local law is found to be invalid, such finding will not have any effect on either the remaining portions or applications of this local law or any provisions of the Code of the County of Ulster, which shall remain in full force and effect.

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SECTION 6. EFFECTIVE DATE.

This Local Law shall become effective immediately upon filing with the Office of the Secretary of State of the State of New York.

Adopted by the County Legislature: July 18, 2023

Approved by the County Executive: August 4, 2023

Filed with New York State Department of State: August 23, 2023