

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 186

Short Title: Repeal HB2/State Nondiscrimination Policies. (Public)

Sponsors: Representatives McGrady, Lucas, Goodman, and Davis (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

February 27, 2017

A BILL TO BE ENTITLED
AN ACT REPEALING S.L. 2016-99 AND S.L. 2016-3; PREEMPTING REGULATION OF
ACCESS TO BATHROOMS, SHOWERS, AND CHANGING FACILITIES; EXPANDING
STATE PROTECTED CLASSES AS TO EMPLOYMENT AND PUBLIC
ACCOMMODATIONS; ALLOWING LOCAL NONDISCRIMINATION ORDINANCES
AND OPTIONAL REFERENDA; AND ENHANCING CRIMINAL PENALTIES RELATED
TO OFFENSES IN CERTAIN PUBLIC ACCOMMODATIONS.

Whereas, on February 22, 2016, the City of Charlotte adopted amendments to a certain ordinance involving its Community Relations Committee provisions, to become effective on April 1, 2016; and

Whereas, on March 23, 2016, the North Carolina General Assembly enacted House Bill 2 in response, and the Governor signed the act into law on that date; and

Whereas, on December 21, 2016, the City of Charlotte passed an ordinance that rescinded those amendments entirely, thereby obviating the need for House Bill 2; and

Whereas, the General Assembly wishes to repeal House Bill 2; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. HB2 Repealed. – S.L. 2016-99 and S.L. 2016-3 are repealed.

SECTION 2. Declaration. – The regulation of access to multiple occupancy bathrooms, to showers, and to changing facilities is a matter of general, statewide concern and the entire field of regulation of such access is preempted from regulation except as provided by an act of the General Assembly.

SECTION 3. Preemption. – Only the General Assembly may regulate access to multiple occupancy bathrooms, to showers, and to changing facilities within the State, except where owned or under the direct control of a city.

SECTION 4. Employment and Public Accommodations. – Article 49A of Chapter 143 of the General Statutes, as amended by this act, reads as rewritten:

"Article 49A.

"Equal Employment ~~Practices~~ and Equal Access to Public Accommodations Act.

"§ 143-422.1. Short title.

This Article shall be known and may be cited as the Equal Employment ~~Practices Act~~ and Equal Access to Public Accommodations Act.

"§ 143-422.2. Legislative declaration.

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of ~~race, religion, color, national origin, age, sex or handicap~~ race, sex, national origin,



1 citizenship, religion, age, veteran status, genetic information, pregnancy, handicap, or disability by
2 employers which regularly employ 15 or more employees.

3 (b) It is recognized that the practice of denying employment opportunity and
4 discriminating in the terms of employment foments domestic strife and unrest, deprives the State
5 of the fullest utilization of its capacities for advancement and development, and substantially and
6 adversely affects the interests of employees, employers, and the public in general.

7 (c) Repealed.

8 (d) It is the public policy of this State to protect and safeguard the right and opportunity of
9 all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges,
10 advantages, and accommodations of places of public accommodations free of discrimination
11 because of race, sex, national origin, citizenship, religion, age, veteran status, genetic information,
12 pregnancy, handicap, or disability.

13 (e) For purposes of this Article, "place of public accommodations" has the same meaning
14 as defined in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact,
15 open to the public.

16 **"§ 143-422.3. Investigations; conciliations.**

17 (a) The Human Relations Commission in the Department of Administration shall have the
18 authority to receive charges of discrimination from the Equal Employment Opportunity
19 Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by
20 Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this
21 process, the agency shall use its good offices to effect an amicable resolution of the charges of
22 discrimination.

23 (b) The Human Relations Commission in the Department of Administration shall have the
24 authority to receive, investigate, and conciliate complaints of discrimination in places of public
25 accommodations. Throughout this process, the Human Relations Commission shall use its good
26 offices to effect an amicable resolution of the complaints of discrimination."

27 **SECTION 5.1.** G.S. 41A-4 reads as rewritten:

28 **"§ 41A-4. Unlawful discriminatory housing practices.**

29 (a) It is an unlawful discriminatory housing practice for any person in a real estate
30 transaction, because of race, color, religion, sex, national origin, citizenship, disability,
31 handicapping condition, genetic information, pregnancy, veteran status, or familial status to:

32 ...

33 (b1) It is an unlawful discriminatory housing practice for any person or other entity whose
34 business includes engaging in residential real estate related transactions to discriminate against any
35 person in making available such a transaction, or in the terms and conditions of such a transaction,
36 because of race, color, religion, sex, national origin, citizenship, disability, handicapping
37 condition, genetic information, pregnancy, veteran status, or familial status. As used in this
38 subsection, "residential real estate related transaction" means:

39 ...

40 (c) It is an unlawful discriminatory housing practice for a person to induce or attempt to
41 induce another to enter into a real estate transaction from which such person may profit:

42 (1) By representing that a change has occurred, or may or will occur in the
43 composition of the residents of the block, neighborhood, or area in which the
44 real property is located with respect to race, color, religion, sex, national origin,
45 citizenship, disability, handicapping condition, genetic information, pregnancy,
46 veteran status, or familial status of the owners or occupants; or

47 ...

48 (d) It is an unlawful discriminatory housing practice to deny any person who is otherwise
49 qualified by State law access to or membership or participation in any real estate brokers'
50 organization, multiple listing service, or other service, organization, or facility relating to the
51 business of engaging in real estate transactions, or to discriminate in the terms or conditions of

such access, membership, or participation because of race, color, religion, sex, national origin, citizenship, disability, handicapping condition, genetic information, pregnancy, veteran status, or familial status.

...

(g) It is an unlawful discriminatory housing practice to discriminate in land-use decisions or in the permitting of development based on race, color, religion, sex, national origin, citizenship, disability, handicapping condition, genetic information, pregnancy, veteran status, familial status, or, except as otherwise provided by law, the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing."

SECTION 5.2. G.S. 41A-5 reads as rewritten:

"§ 41A-5. Proof of violation.

(a) It is a violation of this Chapter if:

(1) A person by his act or failure to act intends to discriminate against a person. A person intends to discriminate if, in committing an unlawful discriminatory housing practice described in G.S. 41A-4 he was motivated in full, or in any part at all, by race, color, religion, sex, national origin, citizenship, disability, handicapping condition, genetic information, pregnancy, veteran status, or familial status. An intent to discriminate may be established by direct or circumstantial evidence.

(2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in G.S. 41A-4, against a person of a particular race, color, religion, sex, national origin, citizenship, disability, handicapping condition, genetic information, pregnancy, veteran status, or familial status. However, it is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that his action or inaction was motivated and justified by business necessity.

...."

SECTION 6.1. Nondiscrimination Ordinances. – Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-499.5. Authority to adopt nondiscrimination measures.

(a) Nondiscrimination/Protected Classes. – Upon at least 30 days' public notice of the text of the proposed ordinance, a city may enact an ordinance that expands within the city's territorial jurisdiction the protected classes established under Article 49A of Chapter 143 and Chapter 41A of the General Statutes by a majority vote of the governing board voting in favor of the ordinance.

The ordinance becomes effective 90 days after adoption by the city's governing board unless a petition to override the ordinance is presented to the governing board. The petition to override must be signed by at least the number of registered voters that is equal to ten percent (10%) of the number of registered voters who cast votes in the most recent municipal election.

(b) Upon presentment of a valid override petition, the county board of elections shall conduct a referendum during the next general or municipal election, whichever is earliest, on whether the ordinance should become effective. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes. The form of the question to be presented on the ballot shall be in substantial conformance with the following:

"[] APPROVE [] DISAPPROVE

The ordinance adopted pursuant to G.S. 160A-499.5 regarding [description of the ordinance, including any proposed protected classes] to be effective within the territorial jurisdiction of [the city]."

(c) Exclusions. – An ordinance adopted under this section shall not:

- (1) Apply to the extraterritorial jurisdiction of a city.
- (2) Apply to a State or county entity.
- (3) Modify the restrictions on city contracts contained in G.S. 160A-20.1(a).
- (4) Regulate access to multiple occupancy bathrooms, to showers, or to changing facilities, unless the property is owned by, or under the direct control of, the city.
- (5) Apply to a charitable organization or a religious institution. For the purposes of this subdivision, the following definitions apply:
- a. Charitable organization. – An organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward, and is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. The term also includes a nonprofit corporation.
- b. Religious institution. – An institution that is (i) a church, ecclesiastical, or denominational organization; (ii) an established physical place for worship in this State at which nonprofit religious services and activities are regularly conducted; (iii) a bona fide religious group that does not maintain specific places of worship; or (iv) a separate group or entity that forms an integral part of a religious organization that is exempt from federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code if the group or entity is primarily supported by funds solicited inside its own membership or congregation. The term does not include a private business owned or operated, in whole or in part, by a religious institution.
- (6) Be construed to prevent a city from establishing nondiscrimination policies for its own employees."

SECTION 6.2. City Contracts/Private Businesses. – G.S. 160A-20.1(a), as amended by this act, reads as rewritten:

"(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by ~~any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a contract, contract or a qualification-based selection, except as otherwise required or allowed by State law."~~

SECTION 6.3. Community Colleges/Nondiscrimination. – G.S. 115D-77 reads as rewritten:

"§ 115D-77. Nondiscrimination policy.

(a) It is the policy of the State Board of Community Colleges and of local boards of trustees of the State of North Carolina not to discriminate among students or against visitors on the basis of race, ~~gender, sex,~~ national origin, citizenship, religion, age, ~~or veteran status,~~ genetic information, pregnancy, handicap, or disability. The local boards of trustees may adopt nondiscrimination policies for those institutions.

(b) The State Board of Community Colleges and each board of trustees shall give equal opportunity for employment and compensation of personnel at community colleges, without regard to race, religion, color, creed, national origin, sex, age, ~~or veteran status,~~ genetic information, pregnancy, handicap, or disability, except where specific age, sex or physical or mental requirements constitute bona fide occupational qualifications. The State Board of Community Colleges may adopt nondiscrimination policies for its own employees."

1 **SECTION 6.4.** UNC/Nondiscrimination. – Part 3 of Article 1 of Chapter 116 of the
2 General Statutes is amended by adding a new section to read:

3 **"§ 116-44.1A. Nondiscrimination policy.**

4 (a) It is the policy of the Board of Governors of The University of North Carolina not to
5 discriminate among students or against visitors on the basis of race, sex, national origin,
6 citizenship, religion, age, veteran status, genetic information, pregnancy, handicap, or disability.
7 The Board of Governors may adopt nondiscrimination policies for the General Administration
8 entity.

9 (b) The Board of Governors shall give equal opportunity for employment and
10 compensation of personnel without regard to race, religion, color, national origin, citizenship, sex,
11 age, veteran status, pregnancy, handicap, disability, or genetic information (except where specific
12 age, sex, or physical or mental requirements constitute bona fide occupational qualifications), and
13 it may adopt nondiscrimination policies for its own employees.

14 (c) It is the policy of each board of trustees of each constituent institution not to
15 discriminate among students or against visitors on the basis of race, sex, national origin,
16 citizenship, religion, age, veteran status, genetic information, pregnancy, handicap, or disability.
17 Each board of trustees may adopt nondiscrimination policies for its institution.

18 (d) Each board of trustees shall give equal opportunity for employment and compensation
19 of personnel without regard to race, religion, color, national origin, citizenship, sex, age, veteran
20 status, pregnancy, handicap, disability, or genetic information (except where specific age, sex, or
21 physical or mental requirements constitute bona fide occupational qualifications), and it may adopt
22 nondiscrimination policies for its own employees."

23 **SECTION 7.** Article 81B of Subchapter XIII of Chapter 15A of the General Statutes
24 is amended by adding a new section to read:

25 **"§ 15A-1340.16E. Enhanced sentence if defendant committed certain offenses in a public**
26 **changing facility or a changing facility in a place of public accommodations.**

27 (a) The following definitions apply in this section:

28 (1) Changing facility. – A facility designed or designated to be used by a person in
29 various states of undress. The term may include, but is not limited to, a
30 restroom, locker room, changing room, or shower room.

31 (2) Place of public accommodations. – As defined in G.S. 168A-3(8).

32 (b) If a person is convicted of any of the felonies set out in subdivisions (1) through (7) of
33 this subsection and it is found as provided in this section that the felony was committed in a public
34 changing facility, or in a changing facility in a place of public accommodations, then the person is
35 guilty of a felony that is one class higher than the underlying felony for which the person was
36 convicted. An enhanced penalty may be imposed pursuant to this section on a person convicted of
37 any of the following offenses:

38 (1) G.S. 14-27.22 (Second degree forcible rape).

39 (2) G.S. 14-27.27 (Second degree forcible sexual offense).

40 (3) G.S. 14-190.9(a1) (Indecent exposure for purpose of arousing sexual desire).

41 (4) G.S. 14-202(d), (e), or (f) (Secretly peeping into room occupied by another
42 person).

43 (5) G.S. 14-202(g) or (h) (Secretly peeping into room occupied by another person),
44 if the person knows or has reason to know that the photographic image
45 possessed or any other image being disseminated was taken in a public
46 changing facility or changing facility in a place of public accommodations.

47 (6) G.S. 14-202.1 (Taking indecent liberties with children).

48 (7) G.S. 14-202.4 (Taking indecent liberties with a student).

49 (c) An indictment or information for the felony shall allege in that indictment or
50 information or in a separate indictment or information the facts set out in subsection (b) of this
51 section. The pleading is sufficient if it alleges that the defendant committed the felony in a public

1 restroom or public changing facility or in a restroom or changing facility in a place of public
2 accommodations. One pleading is sufficient for all felonies that are tried at a single trial.

3 (d) The State shall prove the issue set out in subsection (b) of this section beyond a
4 reasonable doubt during the same trial in which the defendant is tried for the felony unless the
5 defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to
6 the felony but pleads not guilty to the issue set out in subsection (b) of this section, then a jury
7 shall be impaneled to determine that issue."

8 **SECTION 8.** G.S. 14-202 reads as rewritten:

9 **"§ 14-202. Secretly peeping into room occupied by another person.**

10 (a) Any person who shall peep secretly into any room occupied by another person shall be
11 guilty of a Class 1 ~~misdemeanor~~.misdemeanor, provided, however, that if the room is a public
12 changing facility or a changing facility in a place of public accommodations as defined in
13 G.S. 15A-1340.16E(a), the person is guilty of a Class A1 misdemeanor.

14 ...

15 (c) Unless covered by another provision of law providing greater punishment, any person
16 who, while in possession of any device which may be used to create a photographic image, shall
17 secretly peep into any room shall be guilty of a Class A1 ~~misdemeanor~~.misdemeanor, provided,
18 however, that if the room is a public changing facility or a changing facility in a place of public
19 accommodations as defined in G.S. 15A-1340.16E(a), the person is guilty of a Class I felony.

20 ...

21 (h1) Any person who violates subsection (a1) of this section while in a public changing
22 facility or in a changing facility in a place of public accommodations as defined in
23 G.S. 15A-1340.16E(a) is guilty of a Class A1 misdemeanor.

24 ...

25 (m) The provisions of subsections (a), (a1), (c), (e), (g), (h), (h1), and (k) of this section do
26 not apply to:

27"

28 **SECTION 9.** G.S. 14-277.3A(d) reads as rewritten:

29 "(d) Classification. – A violation of this section is a Class A1 misdemeanor. A defendant
30 convicted of a Class A1 misdemeanor under this section, who is sentenced to a community
31 punishment, shall be placed on supervised probation in addition to any other punishment imposed
32 by the court. A defendant who commits the offense of stalking after having been previously
33 convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense
34 of stalking (i) when there is a court order in effect prohibiting the conduct described under this
35 section by the defendant against the victim or (ii) while in a public changing facility or in a
36 changing facility in a place of public accommodations as defined in G.S. 15A-1340.16E(a) is
37 guilty of a Class H felony."

38 **SECTION 10.** G.S. 14-27.33 reads as rewritten:

39 **"§ 14-27.33. Sexual battery.**

40 (a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal,
41 sexual gratification, or sexual abuse, engages in sexual contact with another person:

42 (1) By force and against the will of the other person; or

43 (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and
44 the person performing the act knows or should reasonably know that the other
45 person is mentally disabled, mentally incapacitated, or physically helpless.

46 (b) ~~Any~~ Except as provided in subsection (c) of this section, a person who commits the
47 offense defined in this section is guilty of a Class A1 misdemeanor.

48 (c) Any person who commits the offense defined in this section while in a public changing
49 facility or in a changing facility in a place of public accommodations as defined in
50 G.S. 15A-1340.16E(a) is guilty of a Class I felony."

51 **SECTION 11.** G.S. 14-33 reads as rewritten:

"§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(9) Assaults another person while in a public changing facility or in a changing facility in a place of public accommodations as defined in G.S. 15A-1340.16E(a).

...."

SECTION 12. G.S. 14-190.9(a) reads as rewritten:

"(a) Unless the conduct is punishable under subsection (a1) of this section, any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor. A violation of this subsection that is committed in a public changing facility or in a changing facility in a place of public accommodations as defined in G.S. 15A-1340.16E(a) is a Class 1 misdemeanor, unless the conduct is punishable under subsection (a1) of this section."

SECTION 13. Effective Date. – Sections 7 through 12 of this act become effective December 1, 2017, and apply to offenses committed on or after that date. Except as otherwise provided, the remainder of this act is effective when it becomes law.