

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2016

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40005-TC-1B (03/22)

Short Title: Public Facilities Privacy & Security Act. (Public)

Sponsors: Representatives Bishop, Stam, Howard, and Steinburg (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC ACCOMMODATIONS.

Whereas, the North Carolina Constitution directs the General Assembly to provide for the organization and government of all cities and counties and to give cities and counties such powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the North Carolina Constitution; and

Whereas, the North Carolina Constitution reflects the importance of statewide laws related to commerce by prohibiting the General Assembly from enacting local acts regulating labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina Constitution; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for all businesses, organizations, and employers doing business in the State will improve intrastate commerce; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for all businesses, organizations, and employers doing business in the State benefit the businesses, organizations, and employers seeking to do business in the State and attracts new businesses, organizations, and employers to the State; Now, therefore, The General Assembly of North Carolina enacts:

PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES

SECTION 1.1. G.S. 115C-47 is amended by adding a new subdivision to read:

"(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall establish single-sex multiple occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

SECTION 1.2. Article 37 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.

(a) Definitions. – The following definitions apply in this section:

(1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.

(2) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where students may be



EXHIBIT F

1 in various states of undress in the presence of other persons. A multiple
 2 occupancy bathroom or changing facility may include, but is not limited to, a
 3 school restroom, locker room, changing room, or shower room.

4 (3) Single occupancy bathroom or changing facility. – A facility designed or
 5 designated to be used by only one person at a time where students may be in
 6 various states of undress. A single occupancy bathroom or changing facility
 7 may include, but is not limited to, a single stall restroom designated as unisex
 8 or for use based on biological sex.

9 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of
 10 education shall require every multiple occupancy bathroom or changing facility that is designated
 11 for student use to be designated for and used only by students based on their biological sex.

12 (c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of
 13 education from providing accommodations such as single occupancy bathroom or changing
 14 facilities or controlled use of faculty facilities upon a request due to special circumstances, but in
 15 no event shall that accommodation result in the local boards of education allowing a student to use
 16 a multiple occupancy bathroom or changing facility designated under subsection (b) of this section
 17 for a sex other than the student's biological sex.

18 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy
 19 bathroom or changing facility designated for use by the opposite sex:

20 (1) For custodial purposes.

21 (2) For maintenance or inspection purposes.

22 (3) To render medical assistance.

23 (4) To accompany a student needing assistance when the assisting individual is an
 24 employee or authorized volunteer of the local board of education or the
 25 student's parent or authorized caregiver.

26 (5) To receive assistance in using the facility.

27 (6) To accompany a person other than a student needing assistance.

28 (7) That has been temporarily designated for use by that person's biological sex."

29 **SECTION 1.3.** Chapter 143 of the General Statutes is amended by adding a new

30 Article to read:

31 "Article 81.

32 "Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

33 **"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

34 (a) Definitions. – The following definitions apply in this section:

35 (1) Biological sex. – The physical condition of being male or female, which is
 36 stated on a person's birth certificate.

37 (2) Executive branch agency. – Agencies, boards, offices, departments, and
 38 institutions of the executive branch, including The University of North Carolina
 39 and the North Carolina Community College System.

40 (3) Multiple occupancy bathroom or changing facility. – A facility designed or
 41 designated to be used by more than one person at a time where persons may be
 42 in various states of undress in the presence of other persons. A multiple
 43 occupancy bathroom or changing facility may include, but is not limited to, a
 44 restroom, locker room, changing room, or shower room.

45 (4) Public agency. – Includes any of the following:

46 a. Executive branch agencies.

47 b. All agencies, boards, offices, and departments under the direction and
 48 control of a member of the Council of State.

49 c. "Unit" as defined in G.S. 159-7(b)(15).

50 d. "Public authority" as defined in G.S. 159-7(b)(10).

51 e. A local board of education.

1 f. The judicial branch.

2 g. The legislative branch.

3 h. Any other political subdivision of the State.

4 (5) Single occupancy bathroom or changing facility. – A facility designed or
 5 designated to be used by only one person at a time where persons may be in
 6 various states of undress. A single occupancy bathroom or changing facility
 7 may include, but is not limited to, a single stall restroom designated as unisex
 8 or for use based on biological sex.

9 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies
 10 shall require every multiple occupancy bathroom or changing facility to be designated for and only
 11 used by persons based on their biological sex.

12 (c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies
 13 from providing accommodations such as single occupancy bathroom or changing facilities upon a
 14 person's request due to special circumstances, but in no event shall that accommodation result in
 15 the public agency allowing a person to use a multiple occupancy bathroom or changing facility
 16 designated under subsection (b) of this section for a sex other than the person's biological sex.

17 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy
 18 bathroom or changing facility designated for use by the opposite sex:

19 (1) For custodial purposes.

20 (2) For maintenance or inspection purposes.

21 (3) To render medical assistance.

22 (4) To accompany a person needing assistance.

23 (5) That has been temporarily designated for use by that person's biological sex."

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 25 **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND**
 26 **CONTRACTING**

27 **SECTION 2.1.** G.S. 95-25.1 reads as rewritten:

28 "**§ 95-25.1. Short title and legislative ~~purpose~~; purpose; local governments preempted.**

29 (a) This Article shall be known and may be cited as the "Wage and Hour Act."

30 (b) The public policy of this State is declared as follows: The wage levels of employees,
 31 hours of labor, payment of earned wages, and the well-being of minors are subjects of concern
 32 requiring legislation to promote the general welfare of the people of the State without jeopardizing
 33 the competitive position of North Carolina business and industry. The General Assembly declares
 34 that the general welfare of the State requires the enactment of this law under the police power of
 35 the State.

36 (c) The provisions of this Article supersede and preempt any ordinance, regulation,
 37 resolution, or policy adopted or imposed by a unit of local government or other political
 38 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to
 39 compensation of employees, such as the wage levels of employees, hours of labor, payment of
 40 earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not
 41 apply to any of the following:

42 (1) A local government regulating, compensating, or controlling its own
 43 employees.

44 (2) Economic development incentives awarded under Part 2H of Article 10 of
 45 Chapter 143B of the General Statutes.

46 (3) Economic development incentives awarded under Article 1 of Chapter 158 of
 47 the General Statutes.

48 (4) A requirement of federal community development block grants.

49 (5) Programs established under G.S. 153A-376 or G.S. 160A-456."

50 **SECTION 2.2.** G.S. 153A-449(a) reads as rewritten:

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

9 **SECTION 2.3.** G.S. 160A-20.1(a) reads as rewritten:

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

18 **PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC** 19 **ACCOMMODATIONS**

20 **SECTION 3.1.** G.S. 143-422.2 reads as rewritten:

21 **"§ 143-422.2. Legislative declaration.**

22 (a) It is the public policy of this State to protect and safeguard the right and opportunity of
23 all persons to seek, obtain and hold employment without discrimination or abridgement on
24 account of race, religion, color, national origin, age, biological sex or handicap by employers
25 which regularly employ 15 or more employees.

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

30 (c) The General Assembly declares that the regulation of discriminatory practices in
31 employment is properly an issue of general, statewide concern, such that this Article and other
32 applicable provisions of the General Statutes supersede and preempt any ordinance, regulation,
33 resolution, or policy adopted or imposed by a unit of local government or other political
34 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to
35 the regulation of discriminatory practices in employment, except such regulations applicable to
36 personnel employed by that body that are not otherwise in conflict with State law."

37 **SECTION 3.2.** G.S. 143-422.3 reads as rewritten:

38 **"§ 143-422.3. Investigations; conciliations.**

39 The Human Relations Commission in the Department of Administration shall have the
40 authority to receive charges of discrimination from the Equal Employment Opportunity
41 Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by
42 Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this
43 process, the agency shall use its good offices to effect an amicable resolution of the charges of
44 discrimination. This Article does not create, and shall not be construed to create or support, a
45 statutory or common law private right of action, and no person may bring any civil action based
46 upon the public policy expressed herein."

47 **SECTION 3.3.** Chapter 143 of the General Statutes is amended by adding a new
48 Article to read:

49 "Article 49B.

50 "Equal Access to Public Accommodations.

1 **"§ 143-422.10. Short title.**

2 This Article shall be known and may be cited as the Equal Access to Public Accommodations
3 Act.

4 **"§ 143-422.11. Legislative declaration.**

5 (a) It is the public policy of this State to protect and safeguard the right and opportunity of
6 all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges,
7 advantages, and accommodations of places of public accommodation free of discrimination
8 because of race, religion, color, national origin, or biological sex, provided that designating
9 multiple or single occupancy bathrooms or changing facilities according to biological sex, as
10 defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

11 (b) The General Assembly declares that the regulation of discriminatory practices in places
12 of public accommodation is properly an issue of general, statewide concern, such that this Article
13 and other applicable provisions of the General Statutes supersede and preempt any ordinance,
14 regulation, resolution, or policy adopted or imposed by a unit of local government or other
15 political subdivision of the State that regulates or imposes any requirement pertaining to the
16 regulation of discriminatory practices in places of public accommodation.

17 **"§ 143-422.12. Places of public accommodation – defined.**

18 For purposes of this Article, places of public accommodation has the same meaning as defined
19 in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to
20 the public.

21 **"§ 143-422.13. Investigations; conciliations.**

22 The Human Relations Commission in the Department of Administration shall have the
23 authority to receive, investigate, and conciliate complaints of discrimination in public
24 accommodations. Throughout this process, the Human Relations Commission shall use its good
25 offices to effect an amicable resolution of the complaints of discrimination. This Article does not
26 create, and shall not be construed to create or support, a statutory or common law private right of
27 action, and no person may bring any civil action based upon the public policy expressed herein."

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29 **PART IV. SEVERABILITY**

30 **SECTION 4.** If any provision of this act or its application is held invalid, the
31 invalidity does not affect other provisions or applications of this act that can be given effect
32 without the invalid provisions or application, and to this end the provisions of this act are
33 severable. If any provision of this act is temporarily or permanently restrained or enjoined by
34 judicial order, this act shall be enforced as though such restrained or enjoined provisions had not
35 been adopted, provided that whenever such temporary or permanent restraining order or injunction
36 is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and
37 effect.

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39 **PART V. EFFECTIVE DATE**

40 **SECTION 5.** This act is effective when it becomes law and applies to any action
41 taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended
42 on or after that date, and to any contract entered into on or after that date. The provisions of
43 Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution,
44 regulation, or policy adopted prior to the effective date of this act that purports to regulate a
45 subject matter preempted by this act or that violates or is not consistent with this act, and such
46 ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of
47 this act.