

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 186
PROPOSED COMMITTEE SUBSTITUTE H186-CSSU-8 [v.18]

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Short Title: Repeal and Replace HB2.

(Public)

Sponsors:

Referred to:

February 27, 2017

A BILL TO BE ENTITLED
AN ACT REPEALING AND REPLACING S.L. 2016-99 AND S.L. 2016-3; PREEMPTING
REGULATION OF ACCESS TO BATHROOMS, SHOWERS, AND CHANGING
FACILITIES; ALLOWING LOCAL NONDISCRIMINATION ORDINANCES; 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rescinded those amendments entirely, thereby obviating the need for House Bill 2; and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 and replace House Bill 2; and

Whereas, in so repealing House Bill 2, the North Carolina General Assembly
acknowledges the supreme authority of the United States Constitution and North Carolina
Constitution; 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 HB2 Repealed. – S.L. 2016-99 and S.L. 2016-3 are repealed.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.

SECTION 4. 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 Ordinances. – Upon at least 30 days' public notice of the text of
the proposed ordinance, a city may enact a nondiscrimination ordinance that only applies
within the city's territorial jurisdiction by a majority vote of the governing board voting in favor
of the ordinance.

(b) 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.
- (5) Apply to a religious organization that is a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and classified by the Internal Revenue Code under Major Group (X) Religion Related under the National Taxonomy of Exempt Entities. No ordinance passed under authority of this section shall alter G.S. 41A-4 or G.S. 143-422.1 et seq. as it applies to religious organizations.
- (6) Apply to a nonprofit organization, that for purposes of this section, shall mean an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than a 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 for one of the charitable or religious purposes. No ordinance passed under the authority of this section shall alter the language of G.S. 143-422.1 et seq. as it applies to access to public accommodations under the operation or control of nonprofit organizations, as defined by this section.
- (7) Be construed to prevent a city from establishing nondiscrimination policies for its own employees.

(c) Any ordinance adopted under this section shall not become effective until at least 90 days after adoption by the city's governing board."

SECTION 5. 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. Community Colleges/Nondiscrimination. – G.S. 115D-77 reads as rewritten:

"§ 115D-77. Nondiscrimination policy.

~~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 on the basis of race, gender, national origin, religion, age, or disability.~~

~~The State Board 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 disability, except where specific age, sex or physical or mental requirements constitute bona fide occupational qualifications.~~ The State Board of Community Colleges and each community college shall have the authority to adopt policies to prevent unlawful discrimination, not inconsistent with the requirements of State and federal law."

SECTION 7. UNC/Nondiscrimination. – Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-44.1A. Nondiscrimination policy.

The University of North Carolina and its constituent institutions shall have the authority to adopt policies to prevent unlawful discrimination, not inconsistent with the requirements of State and federal law."

1 **SECTION 8.** Article 81B of Subchapter XIII of Chapter 15A of the General
2 Statutes is amended by adding a new section to read:

3 **"§ 15A-1340.16E. Enhanced sentence if defendant committed certain offenses in a public**
4 **changing facility or a changing facility in a place of public accommodations.**

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

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

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

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

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

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

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

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

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

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

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

28 (c) An indictment or information for the felony shall allege in that indictment or
29 information or in a separate indictment or information the facts set out in subsection (b) of this
30 section. The pleading is sufficient if it alleges that the defendant committed the felony in a
31 public restroom or public changing facility or in a restroom or changing facility in a place of
32 public accommodations. One pleading is sufficient for all felonies that are tried at a single trial.

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

38 **SECTION 9.** G.S. 14-202 reads as rewritten:

39 **"§ 14-202. Secretly peeping into room occupied by another person.**

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

44 ...

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

51 ...

(h1) Any person who violates subsection (a1) of this section 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) is guilty of a Class A1 misdemeanor.

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

...."

SECTION 10. G.S. 14-277.3A(d) reads as rewritten:

"(d) Classification. – A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking (i) when there is a court order in effect prohibiting the conduct described under this section by the defendant against the victim or (ii) 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) is guilty of a Class H felony."

SECTION 11. G.S. 14-27.33 reads as rewritten:

"§ 14-27.33. Sexual battery.

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

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

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

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

(c) Any person who commits the offense defined in this section 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) is guilty of a Class I felony."

SECTION 12. 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 13. 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,

1 lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits
2 the land, building, or premises of which he is owner, lessee or tenant, or over which he has
3 control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor. A
4 violation of this subsection that is committed in a public changing facility or in a changing
5 facility in a place of public accommodations as defined in G.S. 15A-1340.16E(a) is a Class 1
6 misdemeanor, unless the conduct is punishable under subsection (a1) of this section."

7 SECTION 14. Article 21 of Chapter 160A is amended by adding a new section to
8 read:

9 "**§ 160A-499.7. Reconsideration and Repeal of Ordinances.**

10 (a) **Power of Referendum.** – The voters of the city shall have power to approve or
11 reject at the polls any ordinance passed by the governing body, or submitted by the governing
12 body to a vote of the people, except ordinance appropriating money or authorizing the levy of
13 taxes, such power being known as the referendum. Within 60 days after the enactment and
14 publication by the council of any ordinance which is subject to a referendum, a petition signed
15 by the qualified voters of the city equal in number to at least thirty per cent (30%) of the
16 registered voters who voted in the last preceding regular municipal election may be filed with
17 the City Clerk requesting that any such ordinance be either repealed by the city council or
18 submitted to a vote of the qualified voters of the city.

19 (b) **Form of Petitions; Committee of Petitioners.** – All petition papers circulated for
20 the purpose of a referendum shall be substantially uniform in size and style. The signatures to a
21 referendum petition need not all be appended to one paper, but to each separate petition there
22 shall be attached a statement of the circulator thereof as provided by this section. Each signer of
23 any such petition paper shall sign his or her name in ink or indelible pencil and shall indicate
24 after the signer's name his or her place of residence by street and number, or other description
25 sufficient to identify the place. There shall appear on each petition the names and addresses of
26 the same five qualified voters of the city who, as a committee of the petitioners, shall be
27 regarded as responsible for the circulation and filing of the petition. Attached to each separate
28 petition paper there shall be an affidavit of the circulator thereof that only he or she personally
29 circulated the foregoing paper, that it bears a stated number of signatures, that all signatures
30 appended thereto were made in the circulator's presence, and that the circulator believes them
31 to be genuine signatures of the persons whose names they purport to be.

32 (c) **Filing, Examination, Amendment, and Certification of Petitions.** – All petition
33 papers shall be assembled and filed with the City Clerk as one instrument. Within five business
34 days after a petition is filed, the City Clerk shall examine the petition papers to determine
35 whether each paper conforms to the requirements set forth in this section and whether the
36 number of signatures on valid petition papers is the minimum number required. In making the
37 examination, the City Clerk shall declare any petition paper entirely invalid which lacks any
38 one of the following items: (i) the identification of the ordinance upon which a referendum is
39 asked, (ii) the names of the committee members responsible for the petition, or (iii) the
40 affidavit of the circulator. If a petition paper is found to be signed by more persons than the
41 number of signatures certified by the circulator, the last signatures in excess of the number
42 certified shall be disregarded, and the City Clerk shall clearly indicate the cutoff point. If a
43 petition paper is found to be signed by fewer persons than the number certified, the City Clerk
44 shall indicate the actual number of signatures. If the number of signatures on the valid petition
45 papers shall be less than the number required, the City Clerk shall issue a certificate addressed
46 to the committee of the petitioners setting forth the particulars in which the petition is defective.
47 The committee shall be allowed 10 business days to amend the petition by filing additional
48 petition papers, but in no case shall any invalid petition paper be returned to the committee for
49 perfection. In the event an amendment is filed, the City Clerk shall determine within five
50 business days whether the petition as amended is now sufficient. If the City Clerk finds it still
51 to be insufficient, the City Clerk shall file a certificate to that effect in the Clerk's Office and

1 notify the committee of the petitioners of the findings, and no further action shall be had on the
2 insufficient petition.

3 If the City Clerk finds the petition to be sufficient, the City Clerk shall deliver the
4 same to the County Board of Elections for a checking of the names of the signers against the
5 registration books. The Board of Elections shall complete its check within 15 business days,
6 except that the Board shall not be obligated to conduct a check in any 30-day period
7 immediately preceding, or in any 10-day period immediately following, a county-wide or
8 city-wide election. In making its check of names, the Board shall be bound by the finding of the
9 City Clerk as to validity of any particular petition paper and shall follow the provisions of this
10 subsection concerning petitions found to have different numbers of signers than those stated in
11 the affidavits. Upon the completion of its check, the Board of Elections, through its chair or
12 other duly authorized official, shall certify the outcome to the City Clerk. The Board's
13 certificate shall state (i) the total number of registered voters at the time of the most recent
14 regular municipal election, (ii) the number of voters registered in the city whose names appear
15 on the petition papers that the Board found it necessary to examine, and (iii) whether or not this
16 number is sufficient for the submission of the proposed issue or issues to popular vote. If it was
17 found unnecessary to check all names on the petition papers, this fact shall be indicated in the
18 certificate. The petition papers shall be returned to the City Clerk by the County Board of
19 Elections together with its certificate.

20 (d) **Certification of Sufficient Petition; Effect of Certification on Referendum**
21 **Petition.** – Upon receiving the certificate of the County Board of Elections, the City Clerk shall
22 prepare a final certificate indicating the result of the Board's examination and shall submit this
23 certificate to the next regular meeting of the City Council. Whenever a referendum petition, or
24 amended petition, has been certified as sufficient by the City Clerk, the ordinance specified in
25 the petition shall not go into effect until and unless approved by the qualified voters of the city,
26 as provided in this Section.

27 (e) **Consideration by the City Council; Submission of Ordinance to Qualified**
28 **Voters.** – A referred ordinance shall be reconsidered by the City Council and its final vote
29 upon reconsideration shall be taken not later than the second regular meeting of the City
30 Council following the certification and shall be upon the question, "Shall the ordinance
31 specified in the referendum petition be repealed?". If the City Council fails to repeal a referred
32 ordinance, the referred ordinance shall be submitted to the qualified voters of the city at the
33 next regularly scheduled municipal or general election that is not less than 60 days from the
34 date the Council takes its final vote on the ordinance.

35 (f) **Form of Ballot for Referred Ordinances.** – Ordinances submitted to the qualified
36 voters of the city shall be submitted by ballot title, which shall be prepared in all cases by the
37 City Attorney. The ballot title may be different from the legal title of any referred ordinance
38 and shall be a clear, concise statement, without argument or prejudice, descriptive of the
39 substance of the ordinance. The ballot used in voting upon any ordinance, if a paper ballot,
40 shall have below the ballot title the following propositions, one above the other, in the order
41 indicated: "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE." Immediately to
42 the left of each proposition there shall be a place for the voter to mark showing the voter is for
43 or against the ordinance. Any number of ordinances may be voted on at the same election and
44 may be submitted on the same ballot, but any paper ballot used for voting thereon shall be for
45 that purpose only. If voting machines are used, the ballot title of any ordinance shall be
46 presented in a manner to permit the voter to vote for or against the ordinance.

47 (g) **Result of Election.** – A referred ordinance which is not approved by a majority of
48 the qualified voters voting in the election shall be deemed repealed on the date the results of the
49 election are certified by the County Board of Elections. If conflicting ordinances are approved
50 by the qualified voters at the same election, the ordinance receiving the greatest number of
51 affirmative votes shall prevail to the extent of the conflict.

1 (h) **Publication, Amendment, and Repeal of Referendum Ordinances.** –
2 Referendum ordinances adopted or approved by the qualified voters of the city shall be
3 published and shall take effect in the same manner as other ordinances adopted by the City
4 Council. Referendum ordinances may be repealed only by vote of the qualified voters of the
5 city. The City Council may request the County Board of Elections submit a proposition for the
6 repeal of any referendum ordinances, or for amendments thereto, to be voted upon at any
7 succeeding municipal election. If a proposition so submitted receives a majority of the votes
8 cast thereon at the election, the ordinance shall thereby be repealed or amended accordingly.

9 (i) **Applicability.** – This section shall not supersede any local act of the General
10 Assembly enacted prior to January 1, 2017."

11 **SECTION 15. Effective Date.** – Sections 8 through 13 of this act become effective
12 December 1, 2017, and apply to offenses committed on or after that date. Section 14 of this act
13 is effective when it becomes law and expires on January 31, 2019. Except as otherwise
14 provided, the remainder of this act is effective when it becomes law.