

**GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2016**

H

D

BILL DRAFT 2015E2-TC-1 [v.2] (03/22)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/22/2016 10:52:49 PM**

Short Title: Privacy in Private Fac./Clarify Local Auth. (Public)

Sponsors: Representatives Bishop, Stam, 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 Article VII, Section 1 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 Article II, Section 24 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 subsection 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:



* 2 0 1 5 E 2 - T C - 1 - V - 2 *

- (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 in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a school restroom, locker room, changing room, or shower room.
- (3) Single occupancy bathroom or changing facility – A facility designed or designated to be used by only one person at a time where students may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

(b) Single sex multiple occupancy bathroom and changing facilities. – Local boards of education shall require every multiple occupancy bathroom or changing facility that is designated for student use to be designated for and used only by students based on their biological sex.

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

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

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a student needing assistance when the assisting individual is an employee or authorized volunteer of the local board of education or the student's parent or custodial guardian.
- (5) To accompany a person other than a student needing assistance.
- (6) That has been temporarily designated for use by that person's biological sex."

SECTION 1.3. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.

"Single Sex Multiple Occupancy Bathroom and Changing Facilities.

"§ 143-760. 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) Executive branch agency. – Agencies, boards, offices, departments, and institutions of the executive branch, including The University of North Carolina and the North Carolina Community College System.
- (3) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where persons may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a restroom, locker room, changing room, or shower room.
- (4) Public agency. – Includes any of the following:
- a. Executive branch agencies.
- b. All agencies, boards, offices, and departments under the direction and control of a member of the Council of State.

- c. "Unit" as defined in G.S. 159-7(b)(15).
- d. "Public authority" as defined in G.S. 159-7(b)(10).
- e. A local board of education.
- f. The judicial branch.
- g. The legislative branch.
- h. Any other political subdivision of the State.

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

(b) Single sex multiple occupancy bathroom and changing facilities. – Public agencies shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.

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

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

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a person needing assistance.
- (5) That has been temporarily designated for use by that person's biological sex."

PART II: STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND CONTRACTING

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

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

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

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

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

- (1) A local government regulating, compensating, or controlling its own employees.
- (2) Economic development incentives awarded under Part 2H of Article 10 of Chapter 143B of the General Statutes.
- (3) Economic development incentives awarded under Article 1 of Chapter 158 of the General Statutes.

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

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

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

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

SECTION 2.3. G.S. 160A-20.1(a) 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 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 ~~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,~~ as a condition of bidding on a ~~contract~~ contract or a qualification-based selection, except as otherwise required by State law."

PART III: PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

SECTION 3.1 G.S. 143-422.2 is amended by adding a new subsection to read:

"§ 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, biological sex or handicap by employers which regularly employ 15 or more employees.

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

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

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

"§ 143-422.3. Investigations; conciliations.

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

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

"Equal Access to Public Accommodations.

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

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

"§ 143-422-12. Places of public accommodation – defined.

"§ 143-422.13. Investigations; conciliations.

PART IV: SEVERABILITY

PART V: EFFECTIVE DATE