

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

**H.B. 78**  
**Feb 9, 2017**  
**HOUSE PRINCIPAL CLERK**

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**HOUSE BILL DRH40054-LR-19B (01/06)**

Short Title: HB2 Repeal/Equality for All. (Public)

Sponsors: Representative Brockman.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT ALL NORTH CAROLINIANS AGAINST DISCRIMINATION IN  
3 ALL WALKS OF LIFE AND TO INCREASE THE PUNISHMENT FOR CERTAIN  
4 CRIMES THAT INVOLVE SEXUAL ASSAULTS.

5 The General Assembly of North Carolina enacts:

6  
7 **PART I. HB2 REPEAL**

8 **SECTION 1.1.** S.L. 2016-99 and S.L. 2016-3 are repealed.

9  
10 **PART II. HOUSING**

11 **SECTION 2.1.** G.S. 41A-3 reads as rewritten:

12 **"§ 41A-3. Definitions.**

13 For the purposes of this Chapter, the following definitions apply:

14 ...

15 (5a) "Protected status" means a person's race, color, national origin, religion, age,  
16 disability, sex, marital status, familial status, sexual orientation, gender identity,  
17 military or veteran status, or genetic information.

18 ...."

19 **SECTION 2.2.** G.S. 41A-4 reads as rewritten:

20 **"§ 41A-4. Unlawful discriminatory housing practices.**

21 (a) It is an unlawful discriminatory housing practice for any person in a real estate  
22 transaction, because of ~~race, color, religion, sex, national origin, handicapping condition, or~~  
23 ~~familial status~~ the protected status of another person to:

24 (1) Refuse to engage in a real estate transaction;

25 (2) Discriminate against a person in the terms, conditions, or privileges of a real  
26 estate transaction or in the furnishing of facilities or services in connection  
27 therewith;

28 (2a), (2c) Repealed by Session Laws 2009-388, s. 1, effective October 1, 2009.

29 (3) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate  
30 transaction;

31 (4) Refuse to negotiate for a real estate transaction;

32 (5) Represent to a person that real property is not available for inspection, sale,  
33 rental, or lease when in fact it is so available, or fail to bring a property listing  
34 to his attention, or refuse to permit him to inspect real property;

35 (6) Make, print, circulate, post, or mail or cause to be so published a statement,  
36 advertisement, or sign, or use a form or application for a real estate transaction,



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1 or make a record or inquiry in connection with a prospective real estate  
 2 transaction, which indicates directly or indirectly, an intent to make a  
 3 limitation, specification, or discrimination with respect thereto;

4 (7) Offer, solicit, accept, use, or retain a listing of real property with the  
 5 understanding that any person may be discriminated against in a real estate  
 6 transaction or in the furnishing of facilities or services in connection therewith;  
 7 or

8 (8) Otherwise make unavailable or deny housing.

9 ...

10 (b1) It is an unlawful discriminatory housing practice for any person or other entity whose  
 11 business includes engaging in residential real estate related transactions to discriminate against any  
 12 person in making available such a transaction, or in the terms and conditions of such a transaction,  
 13 because of ~~race, color, religion, sex, national origin, handicapping condition, or familial~~ that  
 14 person's protected status. As used in this subsection, "residential real estate related transaction"  
 15 means:

16 (1) The making or purchasing of loans or providing financial assistance (i) for  
 17 purchasing, constructing, improving, repairing, or maintaining a dwelling, or  
 18 (ii) where the security is residential real estate; or

19 (2) The selling, brokering, or appraising of residential real estate.

20 The provisions of this subsection shall not prohibit any financial institution from using a loan  
 21 application which inquires into a person's financial and dependent obligations or from basing its  
 22 actions on the income or financial abilities of any person.

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

25 (1) By representing that a change has occurred, or may or will occur in the  
 26 composition of the residents of the block, neighborhood, or area in which the  
 27 real property is located with respect to ~~race, color, religion, sex, national origin,~~  
 28 ~~handicapping condition, or familial~~ the protected status of the owners or  
 29 occupants; or

30 (2) By representing that a change has resulted, or may or will result in the lowering  
 31 of property values, an increase in criminal or antisocial behavior, or a decline in  
 32 the quality of schools in the block, neighborhood, or area in which the real  
 33 property is located.

34 (d) It is an unlawful discriminatory housing practice to deny any person who is otherwise  
 35 qualified by State law access to or membership or participation in any real estate brokers'  
 36 organization, multiple listing service, or other service, organization, or facility relating to the  
 37 business of engaging in real estate transactions, or to discriminate in the terms or conditions of  
 38 such access, membership, or participation because of ~~race, color, religion, sex, national origin,~~  
 39 ~~handicapping condition, or familial~~ that person's protected status.

40 ...

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

48 **SECTION 2.3.** G.S. 41A-5(a) reads as rewritten:

49 "**§ 41A-5. Proof of violation.**

50 (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, handicapping condition, or familial~~ a person's protected 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, handicapping condition, or familial~~ of a protected 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 2.4.** G.S. 41A-6(a) reads as rewritten:

**"§ 41A-6. Exemptions.**

(a) The provisions of G.S. 41A-4, except for subdivision (a)(6), do not apply to the following:

...

(3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by ~~race, color, sex, national origin, handicapping condition, or familial status;~~ a protected status, other than religion;

...."

**PART III. EMPLOYMENT**

**SECTION 3.1.** G.S. 143-422.2, as amended by this act, reads as rewritten:

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

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~~ sex, sexual orientation, gender identity, disability, marital status, familial status, military or veteran status, or genetic information by employers which regularly employ 15 or more employees. 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."

**SECTION 3.2.** G.S. 126-16 reads as rewritten:

**"§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.**

All State agencies, departments, and institutions and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, marital status, familial status, military or veteran status, age, disability, or genetic information to all persons otherwise qualified."

**SECTION 3.3.** G.S. 126-34.02(b) reads as rewritten:

"(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

(1) Discrimination or harassment. – An applicant for State employment, a State employee, or former State employee may allege discrimination or harassment

1 based on race, religion, color, national origin, sex, sexual orientation, gender  
2 identity, marital status, familial status, military or veteran status, age, disability,  
3 genetic information, or political affiliation if the employee believes that he or  
4 she has been discriminated against in his or her application for employment or  
5 in the terms and conditions of the employee's employment, or in the termination  
6 of his or her employment.

7 (2) Retaliation. – An applicant for State employment, a State employee, or former  
8 State employee may allege retaliation for protesting discrimination based on  
9 race, religion, color, national origin, sex, sexual orientation, gender identity,  
10 marital status, familial status, military or veteran status, age, disability, political  
11 affiliation, or genetic information if the employee believes that he or she has  
12 been retaliated against in his or her application for employment or in the terms  
13 and conditions of the employee's employment, or in the termination of the  
14 employee's employment.

15 (3) Just cause for dismissal, demotion, or suspension. – A career State employee  
16 may allege that he or she was dismissed, demoted, or suspended for disciplinary  
17 reasons without just cause. A dismissal, demotion, or suspension which is not  
18 imposed for disciplinary reasons shall not be considered a disciplinary action  
19 within the meaning of this section. However, in contested cases conducted  
20 pursuant to this section, an employee may appeal an involuntary  
21 nondisciplinary separation due to an employee's unavailability in the same  
22 fashion as if it were a disciplinary action, but the agency shall only have the  
23 burden to prove that the employee was unavailable. In cases of such  
24 disciplinary action the employee shall, before the action is taken, be furnished  
25 with a statement in writing setting forth the specific acts or omissions that are  
26 the reasons for the disciplinary action and the employee's appeal rights. The  
27 employee shall be permitted 15 days from the date the statement is delivered to  
28 appeal under the agency grievance procedure. However, an employee may be  
29 suspended without warning pending the giving of written reasons in order to  
30 avoid undue disruption of work, to protect the safety of persons or property, or  
31 for other serious reasons.

32 (4) Veteran's preference. – An applicant for State employment or a State employee  
33 may allege that he or she was denied veteran's preference in violation of the  
34 law.

35 (5) Failure to post or give priority consideration. – An applicant for State  
36 employment or a State employee may allege that he or she was denied hiring or  
37 promotion because a position was not posted in accordance with this Chapter;  
38 or a career State employee may allege that he or she was denied a promotion as  
39 a result of a failure to give priority consideration for promotion as required by  
40 G.S. 126-7.1; or a career State employee may allege that he or she was denied  
41 hiring as a result of the failure to give him or her a reduction-in-force priority.

42 (6) Whistleblower. – A whistleblower grievance as provided for in this Chapter."  
43

#### 44 **PART IV. PUBLIC ACCOMMODATIONS**

45 **SECTION 4.1.** Chapter 143 of the General Statutes is amended by adding a new

46 Article to read:

47 "Article 49B.

48 "Access to Public Accommodations.

49 "§ 143-422.10. Short title.

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

1 **"§ 143-422.11. Legislative declaration.**

2 (a) It is the public policy of this State to protect and safeguard the right and opportunity of  
3 all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges,  
4 advantages, and accommodations of places of public accommodation free of discrimination  
5 because of race, religion, color, national origin, sex, sexual orientation, gender identity, disability,  
6 marital status, familial status, military or veteran status, or genetic information. It shall not be  
7 deemed to constitute discrimination on the basis of sexual orientation or gender identity for a  
8 public accommodation to provide separate bathrooms or changing facilities based on gender, but a  
9 place of public accommodation shall provide access to such facilities based on a person's gender  
10 identity.

11 **"§ 143-422.12. Places of public accommodation defined.**

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

15 **"§ 143-422.13. Investigations; conciliations.**

16 (a) The Human Relations Commission in the Department of Administration shall have the  
17 authority to receive, investigate, and conciliate complaints of discrimination in public  
18 accommodations. Throughout this process, the Human Relations Commission shall use its good  
19 offices to effect an amicable resolution of the complaints of discrimination.

20 (b) If the Commission is unable to effect an amicable resolution of the charges of  
21 discrimination, the complainant and the Commission may proceed with an enforcement action  
22 using the procedures provided in G.S. 41A-7."

23  
24 **PART V. CREDIT**

25 **SECTION 5.1.** Article 1 of Chapter 75 of the General Statutes is amended by adding  
26 a new section to read:

27 **"§ 75-43. Discrimination by lenders prohibited.**

28 (a) Discrimination Prohibited. – No person engaged in any form of lending money in this  
29 State, or to residents of this State, shall discriminate in the extension of credit on the basis of race,  
30 color, national origin, religion, age, disability, sex, marital status, familial status, sexual  
31 orientation, gender identity, military or veteran status, or genetic information.

32 (b) Filing of Complaint With Human Relations Commission. – Any person who claims to  
33 have been injured by a violation of subsection (a) of this section or who reasonably believes that  
34 he or she will be irrevocably injured by a violation of that subsection may file a complaint with the  
35 North Carolina Human Relations Commission established under G.S. 143B-391. Upon receipt of a  
36 complaint, the Commission shall work with the relevant parties to develop an amicable resolution  
37 to the charge of discrimination. If the Commission is unable to effect an amicable resolution of the  
38 charges of discrimination, the complainant and the Commission may proceed with an enforcement  
39 action using the procedures provided in G.S. 41A-7. Filing of a complaint pursuant to this  
40 subsection shall not preclude the filing of an action pursuant to subsection (c) of this section.

41 (c) Violation an Unfair and Deceptive Trade Practice. – A violation of subsection (a) of  
42 this section shall constitute an unfair trade practice in violation of G.S. 75-1.1."

43  
44 **PART VI. INSURANCE**

45 **SECTION 6.1.** G.S. 58-3-25 reads as rewritten:

46 **"§ 58-3-25. Discriminatory practices prohibited.**

47 ...

48 (c) No insurer shall refuse to insure or refuse to continue to insure an individual; limit the  
49 amount, extent, or kind of coverage available to an individual; or charge an individual a different  
50 rate for the same coverage, because of the race, color, ~~or~~ national or ethnic ~~origin~~ origin, religion,  
51 sex, marital status, familial status, sexual orientation, gender identity, disability, military or

1 veteran status, or genetic information of that individual. This subsection supplements the  
2 provisions of G.S. 58-3-120, 58-33-80, 58-58-35, and 58-63-15(7)."  
3

#### 4 **PART VII. EDUCATION**

5 **SECTION 7.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

6 "(64) To Adopt a Policy on Nondiscrimination in Schools. – Each local board of  
7 education shall adopt a policy to establish that the local board of education and  
8 school personnel employed by the local board shall not discriminate on the  
9 basis of race, color, national origin, religion, age, disability, sex, marital status,  
10 familial status, sexual orientation, gender identity, military or veteran status, or  
11 genetic information. The policy shall include that any person who claims to  
12 have been injured by an unlawful discriminatory practice or who reasonably  
13 believes that he or she will be irrevocably injured by an unlawful  
14 discriminatory practice may file a complaint with the North Carolina Human  
15 Relations Commission established under G.S. 143B-391. Upon receipt of a  
16 complaint, the Commission shall work with the relevant parties to develop an  
17 amicable resolution to the charge of discrimination. If the Commission is  
18 unable to effect an amicable resolution of the charges of discrimination, the  
19 complainant and the Commission may proceed with an enforcement action  
20 using the procedures provided in G.S. 41A-7."

21 **SECTION 7.2.(a)** G.S. 115C-218.45(e) reads as rewritten:

22 "(e) Except as otherwise provided by law or the mission of the school as set out in the  
23 charter, the school shall not limit admission to students on the basis of intellectual ability,  
24 measures of achievement or aptitude, athletic ability, or disability. A charter school shall not limit  
25 admission to students on the basis of race, ~~ereed,~~color, national origin, religion, ~~or ancestry,~~age,  
26 sex, marital status, familial status, sexual orientation, gender identity, military or veteran status, or  
27 genetic information. A charter school whose mission is single-sex education may limit admission  
28 on the basis of sex. A charter school that serves only certain grade levels may limit admission  
29 based on age. Within one year after the charter school begins operation, the charter school shall  
30 make efforts for the population of the school to reasonably reflect the racial and ethnic  
31 composition of the general population residing within the local school administrative unit in which  
32 the school is located or the racial and ethnic composition of the special population that the school  
33 seeks to serve residing within the local school administrative unit in which the school is located.  
34 The school shall be subject to any court-ordered desegregation plan in effect for the local school  
35 administrative unit."

36 **SECTION 7.2.(b)** G.S. 115C-218.55 reads as rewritten:

37 **"§ 115C-218.55. Nondiscrimination in charter schools.**

38 A charter school shall not discriminate ~~against any student~~ on the basis of ~~ethnicity,~~national  
39 origin, ~~gender,~~race, color, religion, age, sex, marital status, familial status, sexual orientation,  
40 gender identity, military or veteran status, genetic information, or disability. Any person who  
41 claims to have been injured by an unlawful discriminatory practice or who reasonably believes  
42 that he or she will be irrevocably injured by an unlawful discriminatory practice may file a  
43 complaint with the North Carolina Human Relations Commission established under  
44 G.S. 143B-391. Upon receipt of a complaint, the Commission shall work with the relevant parties  
45 to develop an amicable resolution to the charge of discrimination. If the Commission is unable to  
46 effect an amicable resolution of the charges of discrimination, the complainant and the  
47 Commission may proceed with an enforcement action using the procedures provided in  
48 G.S. 41A-7."

49 **SECTION 7.3.** G.S. 115C-521.2 is repealed.

50 **SECTION 7.4.** G.S. 115C-562.5(c1) reads as rewritten:

1       "(c1) A nonpublic school shall not discriminate ~~with respect to the categories listed in 42~~  
2 ~~U.S.C. § 2000d, as that statute read on January 1, 2014,~~ on the basis of race, color, national origin,  
3 religion, age, disability, sex, marital status, familial status, sexual orientation, gender identity,  
4 military or veteran status, or genetic information. Any person who claims to have been injured by  
5 an unlawful discriminatory practice or who reasonably believes that he or she will be irrevocably  
6 injured by an unlawful discriminatory practice may file a complaint with the North Carolina  
7 Human Relations Commission established under G.S. 143B-391. Upon receipt of a complaint, the  
8 Commission shall work with the relevant parties to develop an amicable resolution to the charge  
9 of discrimination. If the Commission is unable to effect an amicable resolution of the charges of  
10 discrimination, the complainant and the Commission may proceed with an enforcement action  
11 using the procedures provided in G.S. 41A-7."

12               **SECTION 7.5.** G.S. 115D-77 reads as rewritten:

13       "**§ 115D-77. Nondiscrimination policy.**

14       It is the policy of the State Board of Community Colleges and of local boards of trustees of the  
15 State of North Carolina not to discriminate ~~among students~~ on the basis of race, ~~gender, color,~~  
16 national origin, religion, age, ~~sex, marital status, familial status, sexual orientation, gender~~  
17 identity, military or veteran status, genetic information, or disability.

18       The State Board and each board of trustees shall give equal opportunity for employment and  
19 compensation of personnel at community colleges, without regard to race, religion, color, creed,  
20 national origin, sex, age, marital status, familial status, sexual orientation, gender identity, military  
21 or veteran status, genetic information, or disability, except where specific age, sex or physical or  
22 mental requirements constitute bona fide occupational qualifications.

23       Any person who claims to have been injured by an unlawful discriminatory practice or who  
24 reasonably believes that he or she will be irrevocably injured by an unlawful discriminatory  
25 practice may file a complaint with the North Carolina Human Relations Commission established  
26 under G.S. 143B-391. Upon receipt of a complaint, the Commission shall work with the relevant  
27 parties to develop an amicable resolution to the charge of discrimination. If the Commission is  
28 unable to effect an amicable resolution of the charges of discrimination, the complainant and the  
29 Commission may proceed with an enforcement action using the procedures provided in  
30 G.S. 41A-7."

31               **SECTION 7.6.** G.S. 116-11 is amended by adding a new subdivision to read:

32       "(2a) The Board of Governors shall adopt a policy to provide that The University of  
33 North Carolina and its affiliates and personnel employed by The University of  
34 North Carolina and its affiliates shall not discriminate on the basis of race,  
35 color, national origin, religion, age, disability, sex, marital status, familial  
36 status, sexual orientation, gender identity, military or veteran status, or genetic  
37 information. The policy shall include that any person who claims to have been  
38 injured by an unlawful discriminatory practice or who reasonably believes that  
39 he or she will be irrevocably injured by an unlawful discriminatory practice  
40 may file a complaint with the North Carolina Human Relations Commission  
41 established under G.S. 143B-391. Upon receipt of a complaint, the Commission  
42 shall work with the relevant parties to develop an amicable resolution to the  
43 charge of discrimination. If the Commission is unable to effect an amicable  
44 resolution of the charges of discrimination, the complainant and the  
45 Commission may proceed with an enforcement action using the procedures  
46 provided in G.S. 41A-7."

47  
48       **PART VIII. HUMAN RELATIONS COMMISSION**

49               **SECTION 8.1.** G.S. 143B-391 reads as rewritten:

50       "**§ 143B-391. North Carolina Human Relations Commission – Creation; powers and duties.**

1 There is hereby created the North Carolina Human Relations Commission of the Department  
2 of Administration. The North Carolina Human Relations Commission shall have the following  
3 functions and duties:

- 4 (1) To study problems concerning human relations;
- 5 (2) To promote equality of opportunity for all citizens;
- 6 (3) To promote understanding, respect, and goodwill among all citizens;
- 7 (4) To provide channels of communication among the races;
- 8 (5) To encourage the employment of qualified people without regard to race;
- 9 (6) To encourage youths to become better trained and qualified for employment;
- 10 (7) To receive on behalf of the Department of Administration and to recommend  
11 expenditure of gifts and grants from public and private donors;
- 12 (8) To enlist the cooperation and assistance of all State and local government  
13 officials in the attainment of the objectives of the Commission;
- 14 (9) To assist local good neighborhood councils and biracial human relations  
15 committees in promoting activities related to the functions of the Commission  
16 enumerated above;
- 17 (10) To advise the Secretary of Administration upon any matter the Secretary may  
18 refer to it;
- 19 (11) To administer the provisions of the State Fair Housing Act as outlined in  
20 Chapter 41A of the General Statutes;
- 21 (12) To administer the provisions of Chapter 99D of the General Statutes.
- 22 (13) To administer the provisions of the Equal Access to Public Accommodations  
23 Act as outlined in Article 49B of Chapter 143 of the General Statutes.
- 24 (14) To administer the provisions of G.S. 143-422.3.
- 25 (15) To administer the provisions of G.S. 143-422.13.
- 26 (16) To administer the provisions of G.S. 75-43.
- 27 (17) To administer the provisions of G.S. 115C-47(64).
- 28 (18) To administer the provisions of G.S. 115C-218.55.
- 29 (19) To administer the provisions of G.S. 115C-562.5.
- 30 (20) To administer the provisions of G.S. 115D-77.
- 31 (21) To administer the provisions of G.S. 116-11."

## 32 **PART IX. APPROPRIATION**

33 **SECTION 9.1.** There is appropriated from the General Fund to the Department of  
34 Administration, Human Relations Commission, the sum of seven hundred eighty-eight thousand  
35 Administration, Human Relations Commission, the sum of seven hundred eighty-eight thousand  
36 seventy-six dollars (\$788,076) in recurring funds for the 2017-2018 fiscal year. Of the funds  
37 appropriated by this section, the sum of five hundred forty-five thousand four hundred seven  
38 dollars (\$545,407) shall be used for operating expenses, and the sum of two hundred forty-two  
39 thousand six hundred sixty-nine dollars (\$242,669) shall be used to fund the following new  
40 positions:

- 41 (1) Program Assistant IV.
- 42 (2) Human Relations Specialist I.
- 43 (3) Human Relations Specialist I.
- 44 (4) Administrative Assistant.

## 45 **PART X. INCREASE PUNISHMENT FOR CERTAIN CRIMES THAT INVOLVE** 46 **SEXUAL ASSAULTS**

47 **SECTION 10.1.** Article 81B of Chapter 15A of the General Statutes is amended by  
48 adding a new section to read:

49 **"§ 15A-1340.16E. Enhanced sentence if defendant committed certain offenses in a changing**  
50 **facility.**  
51



1       (a)     For purposes of this section, the term "changing facility" means a facility designed or  
2 designated to be used by a person in various states of undress and that is open to the public or  
3 located in a place of public accommodation as defined in G.S. 168A-3(8). The term includes, but  
4 is not limited to, a restroom, locker room, changing room, or shower room.

5       (b)     If a person is convicted of any of the felonies set out in subdivisions (1) through (3) of  
6 this subsection and it is found as provided in this section that the felony was committed in a  
7 changing facility that is designated for the opposite sex, then the person shall have the minimum  
8 term of imprisonment to which the person is sentenced for that felony increased as follows:

9           (1)     If the felony is a violation of G.S. 14-27.21 (first degree forcible rape) or a  
10 violation of G.S. 14-27.26 (first degree forcible sexual offense), the minimum  
11 term of imprisonment to which the person is sentenced for that felony shall be  
12 increased by 84 months. The maximum term of imprisonment shall be the  
13 maximum term that corresponds to the minimum term after it is increased by 84  
14 months, as specified in G.S. 15A-1340.17(f).

15          (2)     If the felony is a violation of G.S. 14-27.22 (Second degree forcible rape) or a  
16 violation of G.S. 14-27.27 (Second degree forcible sexual offense), the  
17 minimum term of imprisonment to which the person is sentenced for that felony  
18 shall be increased by 60 months. The maximum term of imprisonment shall be  
19 the maximum term that corresponds to the minimum term after it is increased  
20 by 60 months, as specified in G.S. 15A-1340.17(f).

21          (3)     If the felony is a violation of G.S. 14-202.1 (Taking indecent liberties with  
22 children) or G.S. 14-202.4 (Taking indecent liberties with a student), the  
23 minimum term of imprisonment to which the person is sentenced for that felony  
24 shall be increased by 36 months. The maximum term of imprisonment shall be  
25 the maximum term that corresponds to the minimum term after it is increased  
26 by 36 months, as specified in G.S. 15A-1340.17(d).

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

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

36       **SECTION 10.2.** G.S. 14-27.33 reads as rewritten:

37       "**§ 14-27.33. Sexual battery.**

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

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

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

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

46       (c)     Any person who commits the offense defined in this section while in a changing  
47 facility as defined in G.S. 15A-1340.16E(a) that is designated for the opposite sex is guilty of a  
48 Class I felony."

49  
50       **PART XI. EFFECTIVE DATES**

1           **SECTION 11.1.** Section 9.1 of this act becomes effective July 1, 2017. Section 10.1  
2 and Section 10.2 of this act become effective December 1, 2017. The remainder of this act is  
3 effective when it becomes law and applies to causes of action arising on or after that date.