



## Explanation of HB 2 Public Facilities Privacy and Security Act

The ACLU-NC is deeply committed to ensuring equality for all North Carolinians, including lesbian, gay, bisexual, and transgender (LGBT) individuals. On March 23, 2016, the North Carolina General Assembly convened an eight hour special legislative session to debate and pass HB 2, an unprecedented bill that overrides a recently passed LGBT nondiscrimination ordinance in Charlotte, calls into question other LGBT protections, prevents local governments from enacting a range of nondiscrimination and employment policies, requires transgender people to use restrooms and locker rooms in schools and government buildings based on the sex listed on a person's birth certificate, and jeopardizes billions of dollars in federal funds that North Carolina schools receive through Title IX and that state entities receive through federal contracts. This fact sheet explains the provisions of the law. On March 28, 2016, the ACLU and others [filed a lawsuit](#) challenging HB 2 under the Fourteenth Amendment's Equal Protection and Due Process Clauses, as well as Title IX.

### 1. **HB 2 prohibits transgender people from using bathrooms that correspond to their gender identity in public schools and public agencies.**

- **Local school boards** are required to force students to use bathrooms and other single-sex facilities in accordance with the sex displayed on their birth certificate.<sup>1</sup>
- **Public agencies**, including libraries, public health centers, airports, state hospitals, police departments, courthouses, community colleges and the University of North Carolina system, are also required to limit access to bathrooms and changing facilities for use based on the sex listed on a person's birth certificate.
- These provisions intentionally target transgender people for differential treatment, invade their privacy, and expose them to potential violence and harassment.
- Transgender boys are boys and transgender girls are girls. The same goes for transgender men and women. They deserve to use the appropriate bathroom in peace, just like everyone else.
- People who do not conform to expectations of how men and women should look and act should also be permitted to use single-sex facilities without discrimination and harassment but this law also invites discrimination against anyone who does not fit societal gender norms.
- HB 2 supporters claim that the bathroom provisions of the law are necessary because allowing a transgender woman to access the women's bathroom would somehow allow men to access women's bathrooms in order to assault women and girls. This is fear-mongering and fundamentally untrue. Charlotte's ordinance would simply have allowed transgender women and girls to access the bathroom that corresponds with their gender identity, as over 200 cities and counties across the country have done without any negative consequences or increase in public safety incidents.
- **Private businesses** may still allow transgender individuals to use the bathroom that corresponds to their gender identity.

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<sup>1</sup> This directly conflicts with Title IX, which prohibits sex discrimination (including discrimination on the basis of transgender status) in education programs receiving federal funds.

## 2. **HB 2 drastically restricts the ability of local governments to pass nondiscrimination measures that would offer protections to LGBT people.**

- HB 2 is a direct response to a recently passed nondiscrimination ordinance in Charlotte that protects LGBT people from discrimination in public accommodations such as hotels, restaurants, and shops. This is critically important because there are no explicit federal or state laws that protect LGBT individuals from discrimination in public accommodations.
- The Charlotte ordinance prohibited businesses from discriminating against people based on their sexual orientation or gender identity. Providing a commercial service doesn't mean a business owner endorses or agrees with everything the customer believes. It simply means they are providing services to the public, and they are open to everyone on the same terms.
- HB 2 enacts a new statewide policy of **nondiscrimination in public accommodations** that covers *only* discrimination based upon "race, religion, color, national origin, or biological sex". It preempts all existing and any future local public accommodations ordinances that extend or could extend to LGBT individuals.
- HB 2 further clarifies that the state's policy against **nondiscrimination in employment** extends *only* to discrimination on the basis of "race, religion, color, national origin, age, biological sex, or handicap"—excluding LGBT employees from protection, and preempting any local ordinance that extends protections to private sector employees.
- The law restricts local governments from requiring the **recipients of local government contracts** to adopt nondiscrimination policies that go beyond state policy. While local governments still have the ability to issue nondiscrimination policies that protect, for example, their own employees from employment discrimination based on sexual orientation or gender identity, they cannot extend those protections to employees who work for a government contractor.

## 3. **Although HB 2 targets LGBT people, it harms all North Carolina workers.**

- The law preempts local employment regulations relating to compensation or employee benefits—so a local government cannot, for example, enact a city-wide minimum wage that is higher than the state's, or require that employers in a certain locality provide other employee benefits not guaranteed by state or federal law, such as access to a minimum number of paid sick days.
- The law eliminates the ability of those who have been wrongfully terminated in violation of the state's existing policy against discrimination to file a claim in state court, by expressly stating that there is no right of action based upon the nondiscrimination policy of the state. Although people can still file claims in federal court, the timeline for filing in federal court versus state is much shorter, and is potentially much more expensive. This change makes North Carolina one of only two states—the other being Mississippi—that does not provide its residents with the option of filing a wrongful termination discrimination claim in state court.

HB 2 is one of if not the most sweeping anti-LGBT laws in the country. Less than a week after its passage, thousands of people have signed a [petition to repeal the law](#) and replace it with a comprehensive nondiscrimination policy that includes protections for LGBT North Carolinians. If you haven't already, we urge you to do the same.